Babasaheb Dr. B.R. Ambedkar

(14th April 1891 - 6th December 1956)

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Dr. BABASAHEB AMBEDKAR

WRITINGS AND SPEECHES

Vol. 14

PART TWO

(SECTION IV)

Edited

by

Vasant Moon

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Minister for Social Justice and Empowerment
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MESSAGE

Babasaheb Dr. B.R. Ambedkar, the Chief Architect of Indian Constitution was a scholar par excellence, a philosopher, a visionary, an emancipator and a true nationalist. He led a number of social movements to secure human rights to the oppressed and depressed sections of the society. He stands as a symbol of struggle for social justice.

The Government of Maharashtra has done a highly commendable work of publication of volumes of unpublished works of Dr. Ambedkar, which have brought out his ideology and philosophy before the Nation and the world.

In pursuance of the recommendations of the Centenary Celebrations Committee of Dr. Ambedkar, constituted under the chairmanship of the then Prime Minister of India, the Dr. Ambedkar Foundation (DAF) was set up for implementation of different schemes, projects and activities for furthering the ideology and message of Dr. Ambedkar among the masses in India as well as abroad.

The DAF took up the work of translation and publication of the Collected Works of Babasaheb Dr. B.R. Ambedkar published by the Government of Maharashtra in English and Marathi into Hindi and other regional languages. I am extremely thankful to the Government of Maharashtra's consent for bringing out the works of Dr. Ambedkar in English also by the Dr. Ambedkar Foundation.

Dr. Ambedkar's writings are as relevant today as were at the time when these were penned. He firmly believed that our political democracy must stand on the base of social democracy which means a way of life which recognizes liberty, equality and fraternity as the principles of life. He emphasized on measuring the progress of a community by the degree of progress which women have achieved. According to him if we want to maintain democracy not merely in form, but also in fact, we must hold fast to constitutional methods of achieving our social and economic objectives. He advocated that in our political, social and economic life, we must have the principle of one man, one vote, one value.

There is a great deal that we can learn from Dr. Ambedkar's ideology and philosophy which would be beneficial to our Nation building endeavor. I am glad that the DAF is taking steps to spread Dr. Ambedkar's ideology and philosophy to an even wider readership.

I would be grateful for any suggestions on publication of works of Babasaheb Dr. Ambedkar.

(Kumari Selja)

Collected Works of Babasaheb Dr. Ambedkar (CWBA)

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HINDU CODE BILL

SECTION IV

(*Clause by Clause Discussion*)

The discussion on the Hindu Code clause by clause was resumed from 14th December 1950. After prolonged debates, some clauses were cleared. Frustrated by the dilatory tactics of some of the members, Dr. Ambedkar submitted his resignation on 27th October 1951.

This Book contains the discussion in Parliament till the date of resignation by Dr. Ambedkar. The text of Dr. Ambedkar's resignation and discussion thereon in Parliament is included in the next Volume i.e. Vol. No. 15 in this series.

—EDITOR

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HINDU CODE—*contd.*

Clause by Clause Discussion

***Mr. Speaker:** The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee.

Shri R. K. Chaudhari (Assam): Sir, before the Hon. Law Minister proceeds with his Bill, may I make a most humble suggestion and it is this : either we finish the more important and shorter Bills in the agenda, and then take up the Hindu Code Bill and finish it, or let it be understood that the Hindu Code Bill will be considered from now and until the Hindu Code Bill is finished no other Bill will be taken up. Either of the two courses must be adopted. It seems that some people who are very much in favour of the Hindu Code Bill think that they are merely playing with time by taking up this Bill, considering it for a short period up to one stage, and then putting it off further for a longer spell of time. That is rather unfair to everybody concerned. Therefore, my first respectful request is this. Let us finish these shorter and more important Bills, as for instance, the Preventive Detention Bill. Under that Act, a number of persons who were arrested, were released under the orders of the High Courts. They have again been re-arrested and the whole thing has been held up in expectation of a more comprehensive Bill which was promised by Government. I submit, Sir, that, in the interests of law and order and also in view of the fact that justice should be allowed to run undeterred, we must finish the most important legislation, namely, the Preventive Detention Bill first, then the Employers' Liability Bill, and then sit down on the Hindu Code and finish it altogether. I hope my suggestion would be acceptable to the Hon. Law Minister.

Mr. Speaker : Is this suggestion acceptable to the Hon. Minister ?

The Minister of Law (Dr. Ambedkar): No. Sir.

Mr. Speaker : So, we will proceed with the further consideration of the Hindu Code Bill.

Shri Naziruddin Ahmad (West Bengal): Sir, I have a point of order. The Hindu Code Bill is before the House for a very long time.

* Parliamentary Debates (Hereinafter called as P.D.), Vol. VIII, Part II, 5th February 1951, pp. 2356-77.

Meanwhile, some important things have taken place, namely, that the Constitution has been passed and a large number of Acts and sections have been declared to be *ultra vires* of the Constitution. The present Bill would seem to offend against certain definite provisions of the Constitution. We have enacted so many things in the Constitution that I was amazed to find that many relevant Acts are declared *ultra vires* There are two provisions in the Constitution : One is that legislation should not be discriminatory. This is enacted in article 15 ; clause (1) of that article says :

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex . . . ."

I submit that the Bill is confined to Hindus. Within that expression 'Hindus', large number of classes who would not be ordinarily Hindus are attempted to be brought. Even apart from that, there are large classes who will be outside this Bill. I submit that there is discrimination between different castes and persons following different religions. The words 'only of religion' do not seem to make any difference. There is discrimination between different sections of our citizens on the ground of religion. The phrase 'only of religion' does not mean much, for I find there is no other reason why there is difference between the different religious sects, except on grounds of religion. That is one thing.

The second article which I would like to submit for the consideration of the house is . . . .

Shri Tyagi (Uttar Pradesh): May I point out, Sir, that last time when we adjourned, it was decided and all agreed,—he was also a party—that no dilatory motions will be made.

Mr. Speaker : Order, order. He is not making any motion. He is only raising a point of order, according to him.

Shri Naziruddin Ahmad : I shall be very brief, Sir.

Shri B. Das (Orissa) **:** But, he is making a long speech.

Shri Naziruddin Ahmad : The other article to which I would like to refer is 25(1). It says :

> "Subject to public order, morality and health....." which do not mean . . . .

Shrimati Durgabai (Madras) **:** In the name of raising a point of order, is the hon. Member allowed to argue the question on the merits of the case ?

Mr. Speaker : He is arguing and he is entitled to argue ; let us not be impatient with the people who differ.

Shri Sonavane (Bombay) **:** What is his point of order ?

Mr. Speaker : The hon. Member should hear what he is saying.

Shri Sonavane : Is he allowed to argue it ?

Mr. Speaker : I cannot stop a Member, unless I know what he is going to speak, and I cannot know that unless he speaks out. So in order to know what the hon. Member is going to say. I must hear him, and that is the only democratic way in which we can go on.

Shrimati Durgabai : But, will he be allowed to refer to certain clauses of the Bill?

Mr. Speaker : The hon. Member knows that every person who wishes to argue his case is at liberty to speak ; of course, if I find an hon. Member is abusing the liberty or is repeating himself I shall certainly stop him.

Shri Raj Bahadur (Rajasthan) **:** Sir, I would like to know by way of a ruling from you whether the hon. Member can use such derogatory terms as he did, when referring to certain provisions of the Constitution. He said that "subject to public morality, health, etc." are meaningless terms. Can he make such observations ?

Shri R. K. Chaudhari : Sir, I submit that when a point of order is raised and when the Speaker is listening to that point of order, there should be no interruptions from any hon. Member.

Mr. Speaker : Order, order.

Shri Naziruddin Ahmed : I submitted that the words in clause (1) of article 25—"Subject to public order, morality and health" do not really mean anything serious. I think they are the usual dreamy kind of safeguards which have no legal significance. The article further says :

> "... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

With regard to the subject of marriage, it is considered by all devout Hindus that marriage is part of their religious profession and practice. So far as I know, a Hindu thinks of marriage as part of his religion, and if a man has no son, he, it is believed, goes to a particular region in hell.

Shri Tyagi : Order, order, I have no son.

Mr. Speaker : Will the hon. member resume his seat ? Order, order. I want the hon. Member not to interrupt.

Shri Naziruddin Ahmad : In order to ensure against a particular kind of hell, the man should have a son, and in order to have that, he must marry. That is one of the ten *samskaras* of a Hindu. It is a religious practice, and in order, to have son, a man can have one wife or more than one. Therefore. I submit that this provision curtails the Fundamental Right given in article 25(1). I am not raising a point which is only of academic interest, for this clause has been utilized by the Bombay High Court recently in declaring a certain Act—Prevention of Bigamous Marriages Act—to be *ultra vires.*

Dr. Ambedkar : By the Bombay High Court ? I am sure that is not correct. It was probably some magistrate.

Shri Naziruddin Ahmad : The question before us is whether some of the provisions relating to marriage may not be *ultra vires* of the Constitution. There is also the ground of discrimination, in view of article 15(1) of the Constitution. There are numerous other articles detailing with minor aspects of the question, but I think, these two would suffice for the time being. I am well aware of the principle that the Speaker cannot rule out a point because the legality of it is doubtful. But these are real stumbling blocks and I would request you, Sir, to consider the legality of the Bills. As we all know, a large number of Acts and sections have been declared *ultra vires.* Even at the time the Constitution was passed, objections were raised that these might be declared *ultra vires*. We have enacted these Fundamental Rights and anything inconsistent with them; to the extent of that inconsistency, would be null and void. There is no way out of it. If there is any law, any Act, which is in any way inconsistent with these articles, those laws or Acts, to the extent of that inconsistency, shall be void. That is the serious question before us now. Should we pass an enactment which would be declared *null and void* ? Should we not reconsider the Bill in view of the structure of the Constitution which we have chosen to give to ourselves ?

Sir, these are some of the matters which I venture to submit for your consideration.

Mr. Speaker: I do not think I need go in detail over the serious points raised by the hon. Member, Mr. Naziruddin Ahmad. The short answer which I can give to whatever he has stated is this. What he urges now may be true in respect of some of the provisions at the most, not all the provisions. And the proper procedure and time to

deal with them would be when the particular provision which he thinks contravenes the Constitution, comes up for consideration, not till then, because to say all the provisions are of that type, and therefore there should be no consideration of the Bill, would be going too far.

That is the short way in which I can dispose of all the objections which the hon. Member has urged. This does not mean that I agree with his view. But assuming that his view is correct, still the proper time would be when the relevant clause comes up for consideration. This House is perfectly competent to add to, or substract from the Bill as presented to the House, if the House comes to the conclusion that a particular provision is not proper or offends against the Constitution. But it cannot be decided by the Chair just at the very beginning.

I do not think I need go into the merits of the arguments as to how far there is really any discrimination or how far marriage is really a question of religion and so on and so forth.

I think we shall now proceed with the bill, clause by clause.

Clause 2—*(Application of Code)*

Pandit M. B. Bhargava (Ajmer) **:** I have got an amendment standing in my name, proposing the insertion of a new clause 2, after clause 1.

Mr. Speaker : Yes, that is right. The hon. Member may move it now.

Shri Tyagi : Sir, before that, may I refer to a ruling you gave once, and to the ruling which you gave just now ? Once when I raised a point about a Bill being declared *ultra vires,* the ruling was that it was for the Courts to decide whether it was *ultra vires* and that it was not within the purview of the Chair. Sir, do you hold to that view now or will you use discretion in declaring certain clauses *ultra vires* or otherwise of the Constitution ?

Mr. Speaker : I do not think I have yet any grounds for changing my view. If however, grounds are shown. I may reconsider the matter.

Pandit Thakur Das Bhargava (Punjab)**:** Sir, ordinarily clause 1 is taken after all the clauses are finished. In regard to the Hindu Code I find from the amendments to clause 1 that some of them involve questions of a very substantive nature. They relate to applicability of the Code in certain States. Many amendments to clause 1 have been put on the order paper and may I request you kindly to consider whether it would be possible to take up clause 1 first ?

Mr. Speaker : The reason for taking up clause 1 at the end is to see that it may be properly worded, after seeing the final form of the various provisions in the legislation. The hon. Member will see that sub-clause (1) of clause 1 says as to what the name of the Bill shall be : sub-clause (2) deals with the territorial extent of this legislation and sub-clause (3) speaks about the date from which the Bill will come into force.

Pandit Thakur Das Bhargava : Territorial extent is a substantive question.

Mr. Speaker: Even in regard to that, after going through the provisions of the Bill it may be possible for us to see more clearly. As to whether the provisions of the Bill should apply to all parts of India or exceptions should be made in respect of certain provisions in respect to certain States or areas. To my mind, it appears more advantageous to take clause 1 at the end, for then the House will have a more clear picture as to what the provisions of the Bill are. That is a better procedure and we shall proceed with clause 2.

As regards Pandit M. B. Bhargava's amendment, it more or less seeks to amend clause 1 and he wants to put in a new condition for the application of the provisions of the Bill.

Dr. Ambedkar : It is really an amendment to clause 1.

Pandit M. B. Bhargava: I may be allowed to explain.

Mr. Speaker : The amendment says :

> "That this Code or only such part of it shall come into force if and when it is ratified on a referendum by majority of the Hindu electorate of Parliament."

That is, really speaking, an amendment to sub-clause (3) of clause 1, though he places it as a separate new clause. No further arguments are necessary and I shall proceed with clause 2.

Shri Sarwate (Madhya Bharat)**:** Will the official amendments be moved first or will mine be taken up first ?

Mr. Speaker : I am going by the order so far as the provisions of the Bill go. The official amendments will come later on.

Shrimati Durgabai : If the official amendments are moved first they may cover the points to be raised later by non-official amendments.

Mr. Speaker : We will go by the order.

Dr. Ambedkar : May I make a suggestion in the interest of economy of time ....

Shri Tyagi: Withdraw the Bill : that is the best economy of time.

Dr. Ambedkar : That would be too much of an economy. If you look at the various amendments which stand on the order paper you will see that most of the amendments are mere variants of one another. There is no amendment which is very substantially different from the other amendments. I was therefore suggesting whether it would not be a proper procedure to permit Members to move their amendments and then to have a general discussion rather than to permit each amendment to be moved, have a debate on it and then to dispose of it, thereafter have another amendment moved, have a debate on it and then to dispose of it. I was thinking that in the interests of economy of time the procedure I was suggesting might appeal to you.

Mr. Speaker: In fact, we have been following that procedure. Where amendments involve a common point, all the amendments are moved and there is a common discussion. That is the practice which we have been following in the past and therefore, I shall follow that practice here too.

Shri Sarwate : I beg to move :

For clause 2, substitute :

"2. *Application of Code.*—(1) This Code applies to all Hindus.

(2) The expression 'Hindu' in this Code, shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnized under the provisions of that Act prior to the commencement of this Code."

Mr. Speaker : May I suggest one thing more. Those amendments that are printed, as well as others too, have been circularised. So hon. Members may only mention the number of the amendment they propose to move and I shall take it that it has been moved. All the amendments relating to one clause and one subject will be moved and discussed.

Shri Tyagi : The point which the amendments seek to amend will be discussed separately.

Mr. Speaker : Yes.

The Minister of State for Transport and Railways (Shri Santhanam): Sir, is it in order to go against the fundamentals of the Hindu Code itself. The amendment seeks to apply the Code to all Christians, Muslims and others. Does it not go beyond the Code itself? I would like a ruling from you, Sir, on that subject.

Mr. Speaker : Let the amendments be moved first.

Shri Tyagi : The amendment seeks to Hinduise the Muslims, which is against the law or Constitution. Everybody has been guaranteed the liberty of practising his religion and to bring the Muslims and Christians also under the Hindu Code will mean interfering with their religion.

Mr. Speaker : Let the amendments be moved.

Shri Tyagi : This amendment has been moved and therefore it is out of order.

Shri Indra Vidyavachaspati (Uttar Pradesh) **:** I beg to move:

For clause 2, substitute:

"2. This Code applies to all Indians irrespective of their religion, caste or creed".

Pandit Thakur Das Bhargava : I beg to move:

For clause 2, substitute:

"2. Subject to the provisions of section 1 this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion ;

(b) to any other person who is not a Muslim, Christian, Parsee, or a Jew by religion ;

(c) to every woman who married any person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(d) to any child legitimate or illegitimate one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion."

Shri Jhunjhunwala (Bihar) **:** I beg to move :

For clause 2, substitute:

" 2. *Application of Code*—This Code applies to all the citizens of India that is Bharat, irrespective of their caste, creed and irrespective of their belonging to or professing any religion."

Dr. Ambedkar: I beg to move:

In clause 2,—

(1) in sub-clause (1),—

(i) in part (a), for " Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion" ;

(ii) in part (d), for " Hindu religion" substitute " Hindu, Buddhist, Jaina or Sikh religion" ;

(2) omit sub-clause (4).

Shri Naziruddin Ahmad : I beg to move:

(i) In part (a) of sub-clause (1) of clause 2, for " Hindus, that is to say, all persons professing the Hindu religion" substitute " persons who are Hindus by religion".

(ii) Omit part (b) of sub-clause (1) of clause 2.

(iii) For part (b) of sub-clause (1) of clause 2, substitute:

"(b) to all persons who are Buddhists, Jains or Sikhs by religion".

(iv) For part (b) of sub-clause (1) of clause 2, substitute:

"(b) to any person who is a Jaina by religion ;".

(v) In part (b) of sub-clause (1) of clause 2, for "Jaina or Sikh", substitute "or Jaina".

Sardar Hukam Singh (Punjab) **:** I beg to move:

In part (b) of sub-clause (1) of clause 2, omit "or Sikh".

Shri Naziruddin Ahmad : I beg to move:

(i) In part (c)(i) of sub-clause (1) of clause 2, after " illegitimate" insert:

"who, if he has attained the age of eighteen years, is himself a Hindu and".

(ii) In part (c)(i) of sub-clause (1) of clause 2, for "whose parents are Hindus" substitute "whose parents are or have been Hindus".

(iii) In part (c) (ii) of sub-clause (1) of clause 2, after "belongs or belonged" insert "and who, if he has attained the age of eighteen years, is himself a Hindu".

Shri S. P. Misra (Uttar pradesh)**:** I beg to move:

After part (c) (ii) of sub-clause (1) of clause 2, add:

"(iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs ;".

Shri Naziruddin Ahmad : I beg to move:

For part (d) of sub-clause (1) of clause 2, substitute:

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

Babu Gopinath Singh (Uttar Pradesh)**:** I beg to move:

After part (d) of sub-clause (1) of clause 2, add :

"(e) to a Muslim or Christian converted from Buddhism, Jainism, Sikhism or Hinduism in his life time".

Shri Naziruddin Ahmad : I beg to move:

Omit sub-clause (2) of clause 2.

Sardar Hukam Singh : I beg to move:

In sub-clause (2) of clause 2, after " Parsi" insert " Sikh".

Shri Brajeshwar Prasad (Bihar)**:** I beg to move:

After sub-clause (2) of clause 2, insert:

"(2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh."

Shri Naziruddin Ahmad : I beg to move :

(i) Omit sub-clause (3) of clause 2.

(ii) Omit sub-clause (4) of clause 2.

(iii) After sub-clause (4) of clause 2, add :

" (5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State from such time or by such stages as the State Legislature may from time to time by Act provide."

Shri Jhunjhunwala : I beg to move :

To clause 2, add the proviso:

"Provided, however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force and in case of a minor within one year after such a minor attains majority."

Mr. Speaker: I called out each Member who has tabled his amendment or amendments and I find that Shri Shiv Charan Lal and Prof. K. K. Bhattacharya were absent when called. But, as we are following a procedure of calling out the number of the amendment it is possible that these two Members may not have expected that they would have been called so soon as that to move their amendments. Though I am very clear that they should have been in their seats when the Bill is taken up for discussion, as we are starting this procedure in the beginning. I am thinking of permitting them to move their amendments later on if they turn up in the House and wish to move them during the course of discussion on this particular clause.

Shri J. R. Kapoor (Uttar Pradesh) **:** Sir, there are two amendments of which I have given notice. One of them is an amendment to Shri Jhunjhunwala's amendment No. 18 in Supplementary List No. 1.

Mr. Speaker: Is the hon. Member moving further substantial amendments ?

Shri J. R. Kapoor: No. I may be so called but not No. 2.

Mr. Speaker : No 2 of course is an amendment to the amendment of Shri Jhunjhunwala. That I am accepting for moving.

Shri J. R. Kapoor : So far as No. 1 is concerned, it does so happen that it has been given the shape of an absolutely original amendment though I had given it to the Notice Office in the form of an amendment to Mr. Jhunjunwala's amendment No. 13. To put it in a better form the office has given it as a separate amendment. Therefore, I hope you will admit it. The whole thing will be open to discussion and the admission of this will not in any way interfere with the proper disposal of the subject.

Mr. Speaker : It is not a question of disposal. If I were to permit amendments at the last minute, they will be coming in even till the last stage of voting. Therefore, I am unwilling to waive. . . .

Shri J. R. Kapoor : Sir, I was making this submission only in view of the special circumstances of the case. Originally I had put in the first amendment as an amendment to Shri Jhunjhunwala's amendment No. 13 in Supplementary List No. 1. But then to give it a better form the office thought it might be put as a separate substantial amendment. If the Chair is so pleased it can be taken in the original form.

Mr. Speaker: Very well. As it is a change in form only I will permit him to move it.

Shri J. R. Kapoor : I beg to move :

(i) For clause 2, substitute :

"2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

I also beg to move:

(ii) In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, in the proposed proviso to clause 2, for the words beginning with the words "unless such person" to the end, substitute:

"unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be

governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

Mr. Speaker : Amendments moved :

1. For clause 2, substitute:

"*2. Application of Code.*—(1) This Code applies to all Hindus.

(2) The expression ' Hindu' in this Code shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnized under the provisions of that Act prior to the commencement of this Code."

2. For clause 2, substitute:

"2. This Code applies to all Indians irrespective of their religion, caste or creed."

3. For clause 2, substitute:

"2. Subject to the provisions of section 1 this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion ;

(b) to any other person who is not a Muslim, Christian, Parsee, or a Jew by religion ;

(c) to every woman who married any person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(d) to any child legitimate or illegitimate one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion."

4. For clause 2, substitute:

"2. *Application of Code.*—This Code applies to all the citizens of India that is Bharat, irrespective of their caste, creed and irrespective of their belonging to or professing any religion."

5. In clause 2,—

(1) in sub-clause (1),—

(i) in part (a), for "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion" ;

(ii) in part (d), for " Hindu religion" substitute " Hindu, Buddhist, Jaina or Sikh religion";

(2) Omit sub-clause (4).

6. In part (a) of sub-clause (1) of clause 2, for, "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion".

7. Omit part (b) of sub-clause (1) of clause 2.

8. For part (b) of sub-clause (1) of clause 2, substitute :

"(b) to all persons who are Buddhists, Jainas or Sikhs by religion ;".

9. For part (b) of sub-clause (1) of clause 2, substitute :

"(b) to any person who is a Jaina by religion".

10. In part (b) of sub-clause (1) of clause 2, for "Jaina or Sikh", substitute "or, Jaina".

11. In part (b) of sub-clause (1) of clause 2, omit "or Sikh".

12. In part (c) (i) of sub-clause (1) of clause 2, after "illegitimate" insert :—

" who, if he has attained the age of eighteen years, is himself a Hindu and".

13. In part (c) (i) of sub-clause (1) of clause 2, for " whose parents are Hindus" substitute " whose parents are or have been Hindus".

14. In part (c) (ii) of sub-clause (1) of clause 2, after " belongs or belonged" insert "and who, if he has attained the age of eighteen years, is himself a Hindu".

15. After part (c) (ii) of sub-clause (1) of clause 2, add:

"(iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs;".

16. For part (d) of sub-clause (1) of clause 2, substitute :

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

17. After part (d) of sub-clause (1) of clause 2, add:

"(e) to a Muslim or Christian converted from Buddhism, Jainism, Sikhism or Hinduism in his life time."

18. Omit sub-clause (2) of clause 2.

19. In sub-clause (2) of clause 2, after "Parsi" insert "Sikh".

20. After sub-clause (2) of clause 2, insert:

"(2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh."

21. Omit sub-clause (3) of clause 2.

22. Omit sub-clause (4) of clause 3.

23. After sub-clause (4) of clause 2, add:

"(5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State from such time or by such stages as the State Legislature may from time to time by Act provide."

24. To clause 2, add the proviso:

"Provided, however, that notwithstanding anything contained in the above clauses, 'this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such a minor attains majority."

25. For clause 2, substitute :

"2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

26. In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, in the proposed proviso to clause 2, for the words beginning with the words " unless such person" to the end, substitute :

"unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

Shri Naziruddin Ahmad : Sir, I would like to suggest a shortcut. There are a large number of amendments, though governing almost the same matter. I think if all these matters are discussed together there would be confusion and I think, from experience, that we will not get replies to our points. If we consider separately, we can curtail our speeches to prevent repetition. I suggest this only as a matter of opinion.

Mr. Speaker : If we are all determined not to repeat the same thing over again, we need not be very much afraid of repetitions. Of course, the Chair may be put to a much greater strain in watching that there are no repetitions, but the Chair will try its best to do so.

Dr. Ambedkar : And apply sanctions to Mr. Naziruddin Ahmad !

Shri Sarwate : Sir, at the outset an objection has been raised that my amendment would enlarge the scope of the Bill. In the course of my speech, I shall try to show that if it does so at all, it is not being inconsistent either with the object of this Bill or with the provisions of the Constitution.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*.]

As far as I know, there has been no one definition of "Hindu". The connotation and denotation of the term "Hindu" has varied from time to time and from place to place. Possibly, there would be a time when it would come to mean what I have suggested in my amendment. I may quote certain instances where the term "Hindu" is interpreted variously. *Satyarthaprakash,* I am told, does say that "Hindu" means : "whosoever resides in India". *Savarkar,* reformer of Bombay has suggested that whosoever is born in India and who holds her as his sacred land is a Hindu. He has suggested:

आ सिंधु सिंधु पर्यता, यस्य भारत भूमिका ।

पितृभूः पुण्यभूश्चैव, सर्वे हिन्दुरिति स्मृतः ॥

That is to say, one who considers India to be his homeland and also as his sacred land should be considered as Hindu. I need not point out that in America and also probably in South Africa everybody who comes from India is known as "Hindu". Therefore, my amendment does not seek to do anything novel but is in conformity with the interpretation which has been tried to put on this term "Hindu". Again, I may point out that in this Bill itself, the term "Hindu" is not restricted to Hindu law, whatever that may mean. In sub-clause (a) of the definitions, it is said to apply:

> "to all Hindus, that is to say, to all persons professing the Hindu religion",

and in (b):

> "to any person who is Buddhist, Jain or Sikh by religion".

So, this Bill seeks to extend the provisions to Hindus plus Sikhs plus Buddhists plus Jains. I need not go into the history of the Hindu religion. Jainism was certainly at one time opposed to and contradictory to the Hindu religion, if that means *Sanatana Vedic Dharma, Whereas Sanatana Vedic Dharma* relied on the *Vedas* Jainism did not rely on

the Vedas. Therefore, Jain and Hindu *Sanatana Vedic Dharmas* were entirely different religions.

The House then adjourned for Lunch till Half Past Two of the Clock.

The House re-assembled after Lunch at Half Past Two of the Clock.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*.]

Shri Sarwate: When the House rose for lunch I was trying to show that in the Bill along with Hindus, persons of other religions are also sought to be included—religions which were contradictory to and opposed to Hindu religion, *i.e., Sanatana Vedic Dharma*. For instance, Buddhism was against Hinduism ; so also was Jainism. But these two religions have been included in the Hindu Code Bill. So, if the mover of the Bill is entitled to include certain religions other than Hinduism, then I am entitled to move that certain other religions may also be included and in doing so I think I shall not be outside the scope of the Bill.

I was going further to show that the Bill under discussion also seeks to codify and *reform* Hindu law, if I remember aright, it has been stated in the Statement of Objects and Reasons. Possibly that has been done to obviate or remove any possible difficulty that the Constitution may bring in at this stage or later on. What I mean is this. Article 25 of the Constitution lays down that all citizens of India are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. If as man were free to practise his own religion, then he would certainly be at liberty to marry according to the tenets of his religion. But what is sought to be done by this Bill is that he will be forced to marry in a particular way. The principles laid down in this Bill may be entirely opposed to the tenets of his religion. I have a feeling that objection to this may probably be sought to be covered by the subsequent clause of article 25 which reads :

> "(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

By my amendment I want to reform what is Hindu religion. I want to reform Hinduism by widening its scope to all those persons who are citizens of India, including Christians, Parsis, Jews, etc.

Now, Sir, what is Hindu law ? Hindu law is said to be based on *Shruti* and *Smriti,* that is *Vedas*. Further it is said that that is not the only source. The other source is the enactment by proper legislature or proper authority. So, let us say that enactment plus *Vedas* is equal to Hindu law. If X represents *Shruti* and *Smriti* and Y represents enactment, Hindu law is equal to X plus Y. The value of X in the beginning was 100 and that of Y zero. But as time went on encroachments were made by enactments one by one with the result that the position was completely changed.

The very basis of the Hindu religion is the caste system and secondly the particular way in which marriage is held. It is held to be sacred ; it is held to be sacramental and therefore it is said to be indissoluble. It cannot be dissolved. There cannot be a divorce according to the strict *Sanatana Vedic Dharma* as practised by orthodox Hindus. But one by one these fundamentals are being removed. For instance, divorce is allowed . In certain cases castes have been totally ignored and in this Bill it has been said that there will be no caste. So this Bill takes away the whole basis of 'Hinduism' according to the *Sanatana Vedic Dharma*. What this Bill seeks to do is that whereas previously X was hundred and Y was zero and the total was hundred, X is sought to be reduced to zero and Y raised to hundred. They are exactly reversing the position. While once the *Shruti* and *Smriti* was the whole source and enactment nil, now the enactment would be the whole source and *Shruti* and *Smriti* nil. Therefore, what I am now saying is that instead of giving this benefit only to those who are *Sanatana Vedic Dharmas* it should be extended to all. That would be doing on the professed lines of the Bill. My object is to give equality to all persons who are inside the limits of India. I am neither partial to the Hindus, nor to Sikhs, nor to anybody else.

It may perhaps be pointed out that I am trying to extend the scope of the Bill to persons who were not examined; for instance, Christians and Parsis were not examined, and that it would be unfair. My answer is that it would be unfair to include the Sikhs either because they were not examined. So, in point of fairness there is not much to choose between the provisions of the original Bill and the amendment which I am seeking to move. The logical course would be to examine those

persons who were not examined previously and to get their opinion. If necessary the Bill may be held over or returned to do this.

The chief claim of this Bill is said to be this that it is based on a very good sense of fairplay, justice and equity. Suppose it is said, for instance, a person has three sons and three daughters. If he has affection for his sons, he has equal affection for his daughters. If the sons are to inherit because they are born of the parents, it follows that the daughters also having been born of the parents they should also take the inheritance. That is the only reason that can be advanced for giving the inheritance to the daughter, namely, that she is born of her parents, and therefore she necessarily ought to get a share in the property of the father. In a way it is right. Then it should be right not only in me case of Hindus but of Muslims and Sikhs also; it should be so in the case of Christians and others. Therefore, if the law has to be amended it should be made applicable not only to Hindus but to all citizens who happen to be within our jurisdiction and for whom we can legislate.

And here I have a very good support. I shall just quote what Dr. Ambedkar himself has said at a previous stage of the Bill—I am quoting from page 3651 of the report of the proceedings of the House :

> " If my hon. friend's alternative was that there ought not to be communal laws of inheritance and communal laws of marriage but there are to be a common Civil Code applying to all sections, all communities, in fact applying to citizens without discrimination as to religion, cast or creed, I am certainly one with him."

He said this in the course of the discussion on the Hindu Code Bill at some previous stage.

An. Hon. Member : He has changed his opinion.

Shri Sarwate : He should keep his word.

There is also a provision in the Constitution in my favour, and that is article 44 which says:

> " The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India."

A Civil Code necessarily means a Code which deals with marriage, inheritance, adoption and so on. The scope of the Civil Code is co-terminous with and almost the same as that of the Hindu Code Bill. The article in the Constitution says that "the State shall endeavour.....", which is being made by this amendment. So it is but proper that the earliest opportunity should be taken to put this provision of the Constitution into effect and Dr. Ambedkar should be the first person to accept my amendment.

While the discussion on this Code was going on in the previous session, some of my Muslim friends, and also some of my Parsi friends, expressed their entire satisfaction and were very loud in praising the provisions of this Code. I would welcome them and appeal to them to support me. When they consider that the provisions are so good and reasonable, they should follow up their convictions by similar speeches as the one which I am at present making, namely, that the Code should be made applicable to all.

I say that the expression "Hindu" in this Code shall, unless otherwise provided, mean a citizen of India. I have put in the expression "unless otherwise provided" for this reason, namely, that if certain provisions of this law are not applicable to people of certain religions, if for instance they think that adoption is not necessary for them, they can move that for the purposes of adoption "Hindu" should not include, for instance, a Muslim or a Christian. The phrase "unless otherwise provided" would show that it is sufficiently elastic. My definition would be sufficiently elastic to enable every religion to adapt the Code to its own tenets or whatever hon. Members think that their religion requires them to do. So there should be no difficulty in this way either. For instance the Roman Catholics think that divorce is not allowable in their case. If they are convinced they can say that for purposes of divorce "Hindu" should not include a Roman Catholic.

According to this Code there can be two ways of marriage, sacramental and civil. Sacramental marriage would mean a marriage done according to religion. It may be any religion—It may be Hindu, Jain, Christian. That does not come in the way either. For instance there are necessary ceremonies in the *Sanatana Vedic Dharma*. What I am suggesting is that people of those religions need not be afraid that their whole religion would be nullified.

Shri Tyagi: What about those who are already married according to another Code ?

Shri Sarwate : My hon. friend Mr. Tyagi may suggest the necessary amendments at the proper stage for that.

I, therefore, suggest that my amendment meets the provisions of the Constitution ; it is in conformity with what has been said by the Mover of the Bill, the Hon. Dr. Ambedkar ; it meets also all the claims which have been made for this Bill, those of logic, justice and fairplay. I therefore commend my amendment to the House and to the Mover of the Bill for acceptance.

Mr. Chairman: There are some amendments from the hon. Member Shri Gopinath Singh. They have come today. The rule in this House has been that unless the hon. Member in charge of the Bill consents, the Chair does not allow them. The notice has been received only today; I would ask the Hon. Dr. Ambedkar if he is willing to accept them.

Dr. Ambedkar: I have not got copies of those amendments at all and I cannot say anything.

***Shri Indra Vidyavachaspati:** (*English translation of the Hindi Speech*) Sir, my amendment is that the Hindu Code Bill when passed, should be made applicable to every Indian. There should be no distinction of caste, creed or religion therein. This is my amendment. In the beginning, I would like to submit as to why I am speaking today, I have been a member of this Parliament for one year. But I have not taken a single minute of the House. It was because our Hon. Speaker had said that every minute of parliament costs fifty rupees. Thus I have saved thousands of rupees of this Parliament, but I am not inclined to make a saving today. The reason is that I have a fear lurking in my mind. The fear is that I feel there would be difficulties both if this bill is passed and if it is not. I am a staunch social reformer and I want that there should be such legislations for social reforms. The State has a right to frame laws for making reforms in the society. Therefore, what I want to point out is that it cannot be said that it is an interference with any religion. On the other hand I am of the opinion that the State and the legislature must take steps to provide for such legislations relating to social reforms. I do not say that this Bill should not be passed but I am afraid, this bill will not be passed in the form in which it has been presented although Dr. Ambedkar and our Prime Minister have repeatedly expressed the view that it would be passed. I think even in a long session as the Budget Session, we will not be able to pass it unless the guillotine is used. But it is not proper to use guillotine in the case of such bills which affect the whole country. So, this is the first difficulty. The other difficulty is that by passing the Bill in its present form, we will give encouragement to an evil which must not be there and against which we have always stood up. And that evil is communalism. If we pass the Hindu Code Bill, this evil of communalism will raise its head for ever. As this Bill is not applicable to all sections of the

* P.D., Vol. VIII, Part II, 5th February 1951, pp. 2387-92.

population. It will definitely give rise to communalism. If the Bill is not passed. I fear the avenue of making social reforms through legislation may be closed for ever. I have very little hope of its being passed but if it is passed the feeling of communalism will arise and what should have been a boon will turn into a curse. Therefore, when I saw these obstacles and difficulties in the way of social reforms. I decided to say something. I would clearly submit that I am in favour of making laws relating to social reforms. I do not want to go into the details of the proposed reforms, but I would like to say a few words on subjects like polygamy. I want that monogamy should be enforced by law in our country not only for Hindus but for all sections of the population. In the same way, I also say that there should be justice for women and their economic rights should be safe-guarded. I do not believe that only Hindu women are oppressed. There are women of other communities as well who are also oppressed. These atrocities must go. It is better if the society itself removes these atrocities, otherwise law must intervene. If a Constitution can be enacted on principles of equality and equity for the whole of the country, why not laws be made for the entire society ? In the same way I think, there is the question of divorce. We hear many quotations from the *Shastras* against it. I do not want to discuss that subject but I can say on the basis of *Dharma Shastras* as that it is wrong to say that this has not been mentioned in the *shastras*. Everything for and against a certain subject is given there. There are 137 *Smritis*. In the principal one i.e. *Manusmrit* it is written :

Vidvadbhi Sevitah Sadbhirnityamadwesharagibhih

Hridayenabhyanugyatoyo dharmastannibodhata Sannibodh.

(meaning thereby the Dharma is that which is constantly practised by the good, the learned and those who are devoid of prejudice and attachment and which is in full accord with the heart).

Manu has himself said that there were *Smritis* before him. So these *Smrities* are in existence for a very long time. It is wrong to say that there should be no reforms in our society. It will put an end to all the progress in our country. All necessary reforms in the society must be made. I will not go into details because the Bill will be discussed clause by clause later on and amendments can be made at that stage. Therefore I am not in favour of postponing it. But one thing seems certain, that many difficulties will arise if it is passed in this very form. In my opinion, the government may enact an Indian Code, but it should be applicable to the whole country. The reforms should be made for the whole of India.

I will now point out the disadvantages of its being applicable to Hindus alone. Firstly according to the Constitution of free India, we do not want communalism to grow. Ours is a secular state. Under these circumstances, the Government cannot make any law for a particular community. The lawyers can discuss a lot on this subject, but as a layman, I would only submit that in a State where religion has not been given any place or consideration, it is against all justice to frame laws for the followers of a particular religion alone, and such a step will always encourage sectarianism.

This Bill originated in the days of British rule. During that time, Hindus and Muslims were used to be kept apart from each other and everything was done to encourage communalism. Thus, the Bill started in that form. I want to submit as to why this remnant of the British period be allowed to stick on while we have thrown out all others so that there may be no discrimination against a particular section of the society.

Shrimati Durgabai : On a point of order, Sir I understand the hon. Member is raising the question of competency of this Parliament...

Some Hon. Members : No. no.

Shrimati Durgabai: At least that is what I understood him to say. If that is so, I wish to tell him that that issue had already been decided.

Mr. Chairman : I am sorry the hon. Member has not understood the point the Hon. Member was making. He never said that this House is not competent but, on the contrary, he holds that this House is fully competent.

Shri Indra Vidyavachaspati : Let me finish all that I have to say and then perhaps there will be no doubt in this regard.

By this Bill the Government want to achieve a big thing, that is they want to remove all injustice that is done to the women. I do not think there is any Indian social reformer who will not co-operate with the Government in this matter or who will not support this move. But I would like to ask one thing from those who want to remove this injustice done to the Hindu women. This is also an injustice that a man can marry four women at a time but a woman is not allowed to do so. This is an injustice. It Must go. Is this injustice done to Hindu women alone and not to Muslim women also ? I ask my sisters whether they will tolerate that justice should be done only to Hindu women and not to Muslim women ? This injustice done to them must also be removed.

How it can be tolerated that injustice may continue to be perpetrated on them. Why do not the Government include them in this Law ? It is said that if any such Laws for Muslims and others are enacted, it would mean interference in their religion. If the enactment of social laws is interference in their religion, how this law is not an interferene in religion of Hindus also. We therefore should make such a law which may be applicable to all. If it is interference in religion, it is for all. I am of opinion that it is not an interference. The law should be applicable to all alike, Muslims, Sikhs and Christians. There should be no discrimination. There should be no discrimination about it. It is as much our duty to do justice to Muslim women and women of other religions as we do justice to Hindu women. Therefore the present form of this Bill should not be there.

There is another aspect. We may have to face some difficulties regarding this enactment. As we know in Bombay the Bigamy Act was challenged in the High Court and the High Court declared it *ultra vires*. The news has appeared in the newspapers also.

Several Hon. Members : Not High Court, Lower Court.

Shri Indra Vidyavachaspati : Well, let it be Lower Court. Such difficulties may arise. This Act will be challenged in the court. In his recent statement in Bombay, Dr. Deshmukh had invited our attention towards this aspect. We will come across such a difficulty if we pass this bill and if it is challenged and the issue is referred to High Court or Supreme Court then we may have to face new difficulties. Such difficulties may arise if we make it applicable only to Hindus. The Government may well realise that more than sufficient time has passed since this Bill has been introduced and why it has not been possible to make any progress in it. Even the Reformist Hindu Organisations do not support it fully. Even the Reformers are moving amendments to it. To my mind the reason for all this is that we have adopted a wrong measure for social reforms. If a few lines are put in wrongly, there are two ways to correct them. In the first instance we may draw a line in between them or secondly rub them out and draw a fresh straight line instead. But what is being done is that one line is joined with the other line, thus forced insertions are being made. In my opinion the best course would be to withdraw it for reconsideration and introduce such a revised Bill that may have full support. As we have set up uniform political order and economic order in the same way we should introduce such a social order that may be applicable to the whole of the country. Such a Bill should be brought forward.

If Hindu women face some difficulties, the Muslim women also face them. When we have framed such a comprehensive Constitution and set up a uniform economic order for the whole of the country then it is not very difficult to draft such a Bill. Remember, truth is eternal; place, time and person cannot prove obstacle in it. If this principle holds good, then it should be true for all, and if it is not true then it cannot be true for anybody. I think the intention of Government is good. It would be better if that is utilised for the benefit of the whole country. This Bill should be redrafted and introduced here.

I want to submit one thing more, that here we faced the greatest of legal difficulties and complications, all those have been solved and many laws have been passed because of the fact that today the country wants to make progress on the basis of equality and freedom, and is willing to accept all those laws as are based on equality. If a Bill is drafted on this principle and made applicable to the whole of the country surely it would be accepted. This is my view point. But this Bill is not so. Although the Government are very hopeful, it is very good that they are optimist, but they will find many difficulties in getting this bill passed, it will require a three months' session, even then with great difficulty they will be able to get it passed and then even after that there are many obstacles to be faced. Even if this Bill is got passed we will have to face several difficulties before it is enforced, and we will be involved in legal difficulties. I, therefore, will ask those who have framed this Bill, and especially Dr. Ambedkar, who has laboured hard for it and has worked with firm determination, to broaden their outlook, and with their abilities of legal profession, should make such laws as may be applicable to all Indians instead of Hindus alone. The present minor drawbacks in the Bill would be removed automatically as the path of truthfulness is straight.

[MR. SPEAKER *in the Chair*]

I also wish to say this to my hon. sisters that as they want that full justice should be meted out to Hindu women, similarly full justice should also be done to Muslim women and women of other religions. They may argue as to who would accept them. But in Turkey reforms have taken place; it is a Muslim country, and there all have accepted those reforms. As these reforms have been accepted in that Muslim country, similarly here also these reforms will be accepted. Therefore our sisters should adopt the right course and accept these reforms without making any discrimination among themselves. Only then we will be able to get it passed and if it is passed under such circumstances,

then such difficulties will not crop up. Otherwise we have great difficulties before us and if we get it passed even then we will have to face many difficulties.

I may tell them that I am not saying all this to put hindrance in the progress of the Hindu Code Bill. I am a staunch reformer and want that it should be passed, and with this very intention. I am submitting that it should be so modified as to be made applicable to the whole of the country. It can be made applicable only after such a change, otherwise not.

Shri Shiv Charan Lal (Uttar Pradesh) **:** I beg to move an amendment standing in my name. I was not present when I was called.

Mr. Speaker : He can move it now.

Shri Shiv Charan Lal : I beg to move :

Omit the proviso to sub-clause (2) of clause 2.

Mr. Speaker : Amendment moved :

Omit the proviso to sub-clause (2) of clause 2.

***Shri J. R. Kapoor :** Sir, with your permission, I may read out the amendment on which I wish to speak, to refresh the memory of Hon. Members, The amendment runs thus :

For clause 2,.....

Shri Jhunjhunwala : Which amendment is the hon. Member referring to ?

Mr. Speaker : It is an amendment which he has given notice of today. It is not printed in the list.

Shri Jhunjhunwala : We have not got copies of that.

Mr. Speaker : It was once read to the House; he is reading it again.

Shri J. R. Kapoor : The amendment runs thus :

For clause 2, substitute :

"2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, at the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

* P.D., Vol. VIII, Part II, 5th February 1951, pp. 2392-98.

Secondly, there is an alternative amendment. If this is not acceptable, I would commend the other alternative amendment to the acceptance of the House. The alternative amendment runs thus:

In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, printed as No. 18 in Supplementary List No. 1 in the proposed proviso to clause 2, for the words beginning with the words "unless such person" to the end, substitute:

> "unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

Mr. Jhunjhunwala's amendment, as further amended by me, would run as follows:

> "2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat....."

and then follows that this will be applicable only to those persons who would make a declaration in writing and so on and so forth ; I need not repeat that.

Sir, I propose this amendment with a full sense of responsibility, and I hope I will not be misunderstood, as I hope the two previous speakers would not be misunderstood, for my amendment it is very much in line with the two amendments which have already been moved by my friend Mr. Sarwate and my friend Shri Indra Vidyavachaspati. Only mine is an improvement on theirs. I would like to submit first of all, that in proposing this amendment, I am actuated more particularly by the consideration that this Hindu Code should have an easy passage in this House. That is my first consideration. My second consideration is that it should be easily acceptable to the country as a whole, to the various sections of the community, to the various sections of the nation. And thirdly my consideration is that it should not be said of us that in this Parliament, in this country where we have a secular State, where we took very great pains to frame a constitution with the background of a secular State, we are now trying to legislate in a manner which smells of communalism, which clearly indicates that we are trying to legislate for one section of the community and not for the others, that we are trying to legislate for persons who profess one religion and are ignoring the interests of those who profess another religion, or *vice-versa,* that we are trying to do something to encroach upon the rights and religious customs of one section of the community

and are afraid to encroach upon the rights and privileges of another section of the community professing another religion. Therefore, I submit that if my amendment is accepted, it will have very many advantages and absolutely no disadvantage.

I was very happy to hear the point of order raised this morning by my friend Mr. Naziruddin Ahmad, not that I was particularly in agreement with the point of order raised by him, but because of the considerations and the reasons behind his point of order, and the considerations which weighed with him in raising that point of order. He raised the point of order, that the Constitution does not permit us to enact a discriminatory legislation. He referred to article 15 of the Constitution. He referred also to article 25. I feel that the idea working in his mind was, if the provisions of the Hindu Code are beneficent and useful, why should they not be applicable to other sections of the Nation also? And what is in his mind, I am sure, is in keeping with the signs of the times. He would, I am sure, be glad, according to the point of order raised by him, to make an attempt to enact a legislation which would be applicable to all sections of the nation, Hindus, Muslims, Parsis and Christians. There is, of course, another article of the Constitution—article 44 to which reference was made by my friend Mr. Sarwate, that the State shall attempt to have a uniform Civil Code. True, that article is not included in the chapter of Fundamental Rights, but it is under the chapter dealing with the Directive Principles. The Constitution directs us specifically that we should make an attempt to have a uniform Civil Code for the whole country. Well, this is the first occasion when we are attempting to have a Civil Code and in this very first attempt, will it be proper for us, will it be desirable for us to ignore this very important article of the Constitution ? Let us not make a beginning by doing something contrary to the specific directive that has been given to us by the Constitution. When we were sitting as the Constituent Assembly— we all were in it, most of us, and many other eminent persons who are not here were also there—many Muslim Members were also there, and there were Parsis also, and there were also Christians, and persons professing every faith were there. All of them, as far as I remember, unanimously agreed to these clauses in the Constitution, I mean articles 15, 25 and 44. When all those persons professing every faith, were seriously and coolly and calmly considering what sort of legislation we should have in this country, they all unanimously decided that we should have a uniform legislation, so as to be in conformity with

articles 15 and 25 of the Constitution, and also article 44. What has happened since then and now to compel us, to persuade us not to act according to those articles of our Constitution ? Nothing has really happened since then, which should persuade us to go contrary to those provisions. On the other hand, we find that even persons professing religions other than Hinduism, are also anxious that we should have a uniform Civil Code. Mr. Naziruddin Ahmad is a representative of the Muslims. He himself says that it is not open to have a legislation which will govern only one section of the nation, but that one legislation, must govern all the sections of the nation, all persons professing various religions. That being so, I submit there is no reason why we should hesitate to legislate for persons professing different religions. From the amendments that have been tabled and have already been moved. I find that the Sikhs would like to go away from the operation of this Code. That is the effect of one of the amendments moved by my hon. friend Sardar Hukam Singh. Then I find that there are other Hon. Members who are anxious that this clause 2 should be so amended that it should not be applicable necessarily to all the States and all the community. My Hon. Friend Pandit Thakurdas Bhargava, as we all know, is a very great social reformer, and he is always anxious to introduce legislations in this House directed towards social uplift. According to his amendment what he wants is that it should be left open to the various States to adopt the legislation or not. He also desires that it should be open to the various communities either to be governed by the Code or not.

Shri Tyagi : Surely it will not be territorially uniform in that case.

Shri J. R. Kapoor : Exactly. In order to make it applicable to all the territories and communities my amendment should be accepted. It does not restrict the operation of this Code to one territory or another, nor to one community or another. On the other hand it extends the scope of this legislation and seeks to embrace within its ambit Hindus, Muslims, Christians, Parsis or persons professing any other faith.

During the general discussion of this Bill some good points were made by my hon. Friends Dr. Tek Chand and Pandit Thakur Das Bhargava. They said that this Bill would operate in a great measure as a hardship on various sections of the Hindu community, among whom marriage and divorce laws are easy. In some parts of the Punjab and elsewhere, it was pointed, marriages can be easily performed. Why should they be deprived of this easy manner of their marriages ?

Dr. Deshmukh (Madhya Pradesh) **:** Easy marriage, easy divorce !

Shri J. R. Kapoor : In the matter of divorce they have easy laws in various parts of the country, among various sections of the people. Why should those laws be made more difficult ? On the one hand the contention of some was that marriage and divorce laws were made more and more strict by the Code and on the other, the contention of others was why should these marriage and divorce laws be enforced on persons who did not believe in them. My submission therefore is that this Code in whatever form it is passed, should not be forced on any particular section of the Hindu community, or the Sikhs or Jains. It should be left open to them to be governed by it or not. Secondly, some of the provisions of this Code—particularly those relating to monogamy and divorce, with which I am in entire agreement and would like them to be made a little more liberal—are so good that I see no reason why the Muslims should not be entitled to have the advantage thereof.

My hon. Friends Shri Sarwate and Shri Indra have moved their amendments. Particularly the amendment of Shri Indra wants that the whole Code should be compulsorily made applicable to the Muslims. I do not want that it should be so enforced on Muslims just as I do not want that it should be obligatory on every Hindu to be governed by this Code. I want that it should be open to a Hindu, Muslim, Parsi or for the matter of that any person professing any other religion hereto or hereafter, in fact it should be open to every citizen of India either to be governed by the Code or not.

Dr. Ambedkar : Great liberal !

Shri J. R. Kapoor : Not only that, I want that it should be open to anybody to pick and choose various parts of the Code. I am making this statement with all seriousness, because of this reason. There are various clauses in this Bill which should be readily acceptable to some but not to others, similarly there are other clauses which may be acceptable to others but not to all.

Pandit Thakur Das Bhargava : Does my hon. Friend contend that the choice of the person should be per clause ?

Shri J. R. Kapoor : Not per clause but various important parts of the Code. When I made that suggestion I knew that it may require the legal intelligence of Dr. Ambedkar as also Pandit Bhargava and other legal luminaries to amend the various sections of the Code so as to make them fall in line with my amendment. I am sure that this

task is not beyond the capacity of Dr. Ambedkar or Pandit Bhargava or other legal luminaries. Speaking for myself I am particularly in favour of the clause relating to monogamy and divorce. But there are other clauses which I would not like to adopt. I would therefore like to have the liberty of making a declaration to the fact that so far as I am concerned I would like to be governed by the clauses relating to monogamy and divorce and not others. I would beg of this house very seriously to consider the suggestion. Firstly, that this enactment should be applicable to the entire nation, secondly, it should be open to anyone to say by declaration that he wants to be governed by this Code and thirdly, it should be open to him to say also that he wants to be governed by this or that chapter.

Dr. Deshmukh: If the husband and wife differ on the issue of say divorce, who will decide ?

The Minister of Works, Production and Supply (Shri Gadgil) : The child will decide.

Mr. Speaker : Let the hon. Member proceed.

Shri J. R. Kapoor : If the husband and wife differ on the divorce issue I am prepared to give the choice to the wife, if thereby I can secure the support of the lady Members here. If my suggestion is accepted, of course the various provisions of the Bill will have to be recast. It is a matter of principle. Once the principle is accepted— namely that we should have one uniform law for the whole country, secondly that we should give the liberty to every citizen to say whether he wants to be governed by the Code or not and thirdly, the liberty to pick and choose various aspects of the Code—proper amendments could of course be drafted. I know how difficult it is but difficult as it is certainly it is much easier than the task of getting this Bill passed by this House and, certainly it is easier than to get the support of the entire nation for this Bill as it is, compulsorily enforceable among the Hindus, Sikhs, Jains and Buddhists.

Therefore, I submit that my suggestion should be very seriously considered. I hope and trust that if we consider it coolly, calmly, dispassionately and without any prejudice either for or against it, certainly we shall be able to come to an agreed solution and perhaps within five or seven days we may be able to pass this controversial measure. It will satisfy everybody. It will satisfy those who want to have a uniform Code. It will satisfy the orthodox Hindus because it

will not be necessary to enforce the Code on them; it will be open to them to be governed by it or not. It will satisfy those reformers also who want to have legislation on these lines because it will enable them to declare that they want to be governed by this legislation. It will therefore satisfy everybody and offend nobody. With these submissions I commend my amendment for the acceptance of the House.

My alternative amendment is also on the same lines but it restricts the operation of the Code to Hindus only. According to my first amendment, I want that the whole Code, in whatever form it may be passed, should be applicable to the entire nation, subject to the condition that it will be applicable only to those who declare that they want to be governed by it. If, however, that suggestion is not acceptable for any reason then I submit in my second amendment that the Code should be applicable to the Hindus, Sikhs and Jains as has been provided but that there also it should be applicable only to such Hindus, Jains, Sikhs and Buddhists who by declaration state they want to be governed by it.

***Dr. Deshmukh :** I have two points to make so far as these amendments are concerned. There are various amendments that have been moved but I should first wish to speak on the amendment of Mr. Sarwate and then on the amendment moved by the Hon. Dr. Ambedkar. I feel inclined to support the amendment of Mr. Sarwate on constitutional basis, and I feel that he has certainly brought forward an amendment which advances the cause of the Constitution, in case it is accepted that it requires advancement. I personally think it does since there is a section of Members of this House who do not regard very seriously what we have embodied in the Constitution. I would beg of you to give me a few minutes to refer to article 44 which reads:

> "The State shall endeavour to secure for the citizens a uniform civil Code throughout the territory of India".

Now, this is an article from the Directive Principles of State Policy. Although it is not contemplated that any decision of government could be set aside by the Supreme Court or could be regarded as illegal and against law on this score, I don't know whether it would be competent for the Supreme Court to give a ruling. But if we attach

*P.D., Vol. VIII, Part II, 5th February 1951, pp. 2392-2404.

any value or wish to give any serious consideration to the Directive Principles of State Policy in the Constitution, I am unable to see how by passing this Code we would be endeavouring to secure for the citizens a uniform Civil Code throughout the territory of India. What we would be doing by this Code would be entirely and directly contrary to what is laid down in Article 14. Because this is not only not endeavouring to secure for the citizens a uniform Civil Code but trying to enact a different Code for a section of the people. So, before we go ahead, before we waste any more time, we should consider this point. And I am sure we are doing nothing else but wasting time because for the next three days I am certain it would not be easy to go much further than Clause 2 and we don't know how long after that we would be touching the Hindu Code. A suggestion has already been made that it would have been far better, if we really wanted to pass this Code, that one whole session should have been devoted to it. To allot three days during which it would not be possible to advance very far I consider, a pure waste of time, energy and money of this House. It can serve only one purpose and that of merely satisfying the whims and fancies or dogged determination or inclination of certain people. It would be quite easy when we have got a couple of thousand people obstructing our way or shouting slogans to desist Members of this House from passing this Code, to find one or two persons who would like to go to the law courts to get a ruling that what we are trying to do is not only not in keeping with the constitutional provisions but is directly opposed to what has been laid down.

Shrimati Durgabai : Others also will go to courts.

Dr. Deshmukh : Both sides will be there. You will get a notice at the cost of those people who go there first.

Shrimati Durgabai : Others will be there on the basis of provisions regarding discrimination.

Dr. Deshmukh : Yes, there is discrimination everywhere and that is exactly the objection that is raised. If we enact this Code as it is, there will be discrimination in favour of certain people and against certain others who are also handicapped similarly, if not worse. That is a point which goes in our favour.

My second point on these amendments is that I am opposed to the amendment moved by Dr. Ambedkar. By his amendment No. 15 in the printed list, he wants the substitution of the words "persons who are Hindus by religion" for the words "Hindus, that is to say,

to all persons professing the Hindu religion". It is very difficult to find out which version really holds the ground at the present moment when there have been so many revisions and such a huge lot of amendments have been moved. It is not easy to know where exactly we stand. I don't see what is wrong with the original provision contained in the Code as it emerged from the Select Committee. The wording there is :

> " 2 (a) This Code applies to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments."

In his amendment Dr. Ambedkar proposes the substitution of these words by "persons who are Hindus by religion". I don't see any difference between the two wordings. By the words "all Hindus" you refer to all people who are "Hindus by religion". The original wording further explains the words "all Hindus" by saying it means "all persons professing the Hindu religion". Thereby the Code will apply to any person who claims to be a Hindu. These words are now sought to be substituted. No reasons have so far been given as to why they are going to be substituted by new words. If they are actually omitted, and if Dr. Ambedkar can persuade the House to omit those words, I think a very real difficulty may arise. If you eliminate "professing" how are you going to define who is a Hindu and who is not a Hindu. The words proposed are "all persons who are Hindus by religion". But how do we know who is a Hindu by religion and who is not ? Is it proposed that every person would be required to make a declaration ? I don't know what procedure is suggested and how it would be ascertained if a particular person is a Hindu or not. I would say that the words as they stood in the original Code as it emerged out of the Select Committee have stood the test of time. So far as my recollection goes, these words are there in Mulla's *Hindu Code* and these words have been used from very old times. They have a sanction of long usage.

In view of that there is, in my opinion, no need for this amendment and I would suggest that it should not be accepted. I support the amendment moved by my hon. friend Shri Sarwate on the ground that if we accept it, we would be acting in the spirit of the Constitution. Otherwise all our efforts are liable to be fruitless in view of the constitutional difficulty I have pointed out.

Shri Syamnandan Sabaya (Bihar)**:** May I make a submission in this connection ? There are several amendments moved formally by the authors, but the movers have not made any speech explaining their viewpoint. One of such amendment is from the Hon. the Law Minister himself. Such of us who have not moved any amendment to this clause and have an open mind would like to hear the Government point of view as also the point of view of the movers of the other amendments in order to enable us either to take part in the deliberations or to decide how to act in the circumstances. May I therefore suggest that movers of the amendments should first make their speeches and then the clause should be thrown open for general discussion. This would help the discussion and the decision. In any case, we would like to hear the Hon. the Law Minister's view point on his amendment, so that we may either support him or oppose him.

Mr. Speaker : I was thinking of calling upon the movers of the amendments one by one, but I found that instead of the movers who did not appear anxious to catch my eye others caught my eyes. That is why I called upon others.

Dr. Ambedkar : The movers have sat back. In fact, I am myself waiting to hear them.

Mr. Speaker : The Hon. the Law Minister is at liberty to choose his own time but I did call upon him now because I thought that if he participated a little later it would be possible for him to clear the ground.

Dr. Ambedkar : I can speak at any time.

Mr. Speaker : He will be entitled to two speeches; that is to say, even if he participates in the debate now, he will be entitled to reply.

Shri Syamnandan Sahay : He may reply to the general debate on the clause, but as regards his own amendment he must satisfy the House that there is some reason for moving that amendment on behalf of Government.

Mr. Speaker : I think his position stands a little differently. He has to take into consideration what others say and then he will be able to explain his viewpoint better. That is why I was thinking of calling upon him at a later stage, though not at the end.

Sardar Hukam Singh : I do not know how the impression has got into your mind that the movers of the amendment do not want to speak on their amendments.

Mr. Speaker : I never said 'they never wanted to speak'. I said they did not try to catch my eye. In between, Dr. Deshmukh got up and I called on him to speak.

Several Hon. Members : *rose—*

Mr. Speaker : I am not sure whether I should call Pandit Bhargava at this stage—for personal reasons. Mr. Jhunjunwala.

Shri Jhunjhunwala : Sir, I have given notice of two alternative amendments. One of my amendments reads thus:

> "This Code applies to all citizens of India, that is Bharat, irrespective of their caste, creed, and irrespective of their belonging to or professing any religion".

Alternatively, I have moved another amendment which reads thus :

> "Provided, however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person unless such person got his name registered with such authority and in such manner as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such a minor attains majority."

I want to assure the House that these amendments of mine are not dilatory ; nor am I opposed to all the provisions of this Code. The main object in moving my first amendment is that, as has been pointed out by my hon. Friend Mr. Naziruddin Ahmad, we have been passing many laws which are being declared *ultra vires* either by the High Courts or by the Supreme Court. It is therefore very necessary that before we take any such Bill, Act or legislation into consideration we should make sure that we are acting according to the Constitution. If we pass any law and ultimately that law is declared *ultra vires,* it will be a mere waste of the time of this House and also waste of so much money. It will serve no useful purpose. Under article 15 of the Constitution it is laid down that the State shall not discriminate against any citizen only on ground of religion, race, caste, sex, place of birth or any of them. The amendment that I have moved makes this Code applicable to all citizens of India, that is, Bharat, whereas the clause as it stands is restricted only to a particular class of persons. If the law that we are passing is for the good it is good for all people. It is not right that we should discriminate one particular community against another. We should not discriminate one set of persons who are professing one religion from another set of persons who are professing another religion if our law is for their good. If it is not

for their good, then it is not right that we should thrust any law or enactment upon a particular community or caste which is professing a particular religion.

One of the points which I wanted to make out was this : the House should see whether this Bill is one which Parliament can make, especially as it is restricted to a particular kind of persons professing a particular kind of religion. We can have such a law under Article 25 of the Constitution. Now let us see what are the provisions in article 25 which entitle us to take up such legislation. Article 25(1) reads :

> "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

Clause 2 of the Bill relating to the Application of the Code reads :

> "(1) This Code applies—
>
> (a) to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayats and members of the Brahmo, the Prarthana, or the Arya Samaj;
>
> (b) to any person who is a Buddhist, Jaina or Sikh by religion ;
>
> (c) (i) to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section;
>
> (ii) to any child, legitimate or illegitimate one of whose parents is a Hindu within the meaning of this section; provided that such child is brought up as a member of the community, group or family to which such parent belongs or belonged; and
>
> (d) to a convert to the Hindu religion.
>
> (2) This Code also applies to any person, who is not a Muslim, Christian, Parsi or Jew by religion :
>
> Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code has not been passed, then, this Code shall not apply to that person in respect of those matters;
>
> (3) The expression "Hindu" in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code ;
>
> (4) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all Hindus whose

marriages have been solemnized under the provisions of that Act prior to the commencement of this Code."

I have not been able to understand why this Code is being enacted only for the Hindus, if the right has been given—as has been done under article 25—that " subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." If this right has been given to the Hindus and persons professing other religions, I do not see any reason why it is sought to be taken away from Hindus by enactment of such laws, such as the one now before us. I would ask the Law Minister whether he is not encroaching on the rights of Hindus of their religious liberty sanctioned by the Constitution.

Clause (2) of article 25, however says that:

" Nothing in this article shall effect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

But if this piece of legislation which is now under discussion is being enacted as a measure of social reform and for the welfare of the people, in that case I cannot understand why it should be confined to persons professing particular religions and not extended to all.

Shri Raj Bahadur : May I raise a point of order, Sir.

Three or four hon. Members of this House have raised the point that the scope or application of this piece of legislation should be extended to all the citizens of India. In the course of the first reading of the Bill the house has already committed itself to the principle that the Bill shall apply only to the Hindus. Having accepted this principle, is it now open to Members to take up this point anew and afresh ?

Mr. Speaker : The point of order practically comes to this—I am stating it in my own way. Briefly stated it would be as to whether some of the amendments which seek to extend the application of this Code to communities other than those included in the Bill is not tantamount to an extension of the scope of the Bill—is that the point of order ?

Shri Raj Bahadur : The House had agreed that this Code shall apply to one section of the Indian people alogb ne. Can we now take a new decision that it shall apply to all ?

Mr. Speaker : It comes to the same thing. The objection is that the scope of the Bill is being extended now—that is the point of objection. Personally, I myself was feeling doubtful about the admissibility of certain amendments which are now proposed and which apparently seek to extend the scope of the Bill but I have not come to any conclusion. I should first hear Members and then decide at the end as to whether I should put the amendments to vote or not.

Dr. P. S. Deshmukh : It is quite open to the House to extend or limit the scope of any legislation. So long as any particular clause is not passed by the House, it is completely at liberty to do that. Supposing the original Bill says that the Code will apply to the whole of India and the House proposes an amendment by which it excludes certain States or *vice versa* ? I feel certain the House is quite competent to do so.

Mr. Speaker : The extension of the Act to the whole of India and then limiting it to a part of India would not be an extension of the principle of the Act. The principle of the Act is something of substantive law, which extends not territorially but in other respects. It is perfectly competent, *prima facie,* to say that it shall not apply to Sikhs, Jains or Buddhists; but the point is whether it is competent now to say that it shall apply to Christians, Muslims, Parsis and Jews.

Shri Syamnandan Sahaya : There are two submissions I wish to make.

Before you give a ruling I would request you to give us a little chance.

Mr. Speaker : I shall give members every chance.

Khwaja Inait Ullah (Bihar) **:** Are these amendments which are being moved directed to bring in Muslims also within the scope of the Hindu Code and directed against our Fundamental Rights under article 25 of the Constitution ?

4. p.m.

Mr. Speaker : That does not arise. It is a part of the wider question again as to whether the Code itself goes against the spirit of the Constitution.

Khwaja Inait Ullah : It is clear ……..

Mr. Speaker : It may be clear to the hon. Member, but it is not so clear to me. Therefore, let us hear what the hon. Members have

to say and then coolly consider. There is no use going on presuppositions. After all it is a matter which affects vitally large sections of people. The question is whether it offends against the provisions of the Constitution.

Shri J. R. Kapoor : Before you are pleased to give a ruling on this question as to whether these amendments are or not in order, may I request you to give us an opportunity to speak on that particular point, because so far none of us have expressed ourselves about the admissibility of these amendments ?

Mr. Speaker : I think I shall give them an opportunity. But first of all I want to hear what they really mean and whether they are trying to extend the scope of the Bill. I shall give them a hearing.

Shri Jhunjhunwala : I was pointing out to the House that if a particular kind of legislation is one of reform or is in the interests of public good, then this Parliament will not be partial in enacting such a kind of legislation.

[Pandit Thakur Das Bhargava *in the Chair*.]

When a particular kind of legislation is being enacted for the welfare of the people why should it be restricted wholly to a certain class of persons and why should it not be extended to all ? If it is good, it is good; if it is bad, it is bad. And if it is bad why should we apply it to the Hindus ? Why should we thrust it upon the Hindus ? Why should they not be left free to practise their own religion and act according to their own ancient ideas ? It is said that this Bill is being enacted because the present system of marriage and other things are not in the interest of society, that they are spoiling society and that this particular kind of legislation is good for the society. If a particular kind of legislation may be regarding marriage, may be regarding inheritance, may be regarding anything, I do not want to go into those details which I shall do when the particular clauses come—but if, as I have said, particular things are good for certain persons. I would like to have the reasons from my hon. friend Dr. Ambedkar who is described as Manu of modern age as to why the particular piece of legislation is bad for Muslims, because he is excluding them, he is purposely excluding them by saying that this Code shall not apply to Muslims. I would like to know why it should not apply to everybody and why it should apply only to Hindus. If it is good it should apply to you, me and everybody. And secondly, as I said, if it is a bad law, why should it be thrust upon a particular

class of persons ? Lastly, when the question comes up whether these amendments are admissible or not, just as my friend Mr. Jaspat Roy Kapoor has said, I would request that we should be given an opportunity to explain our position.

***Shri Naziruddin Ahmad :** Sir, as regards the amendment moved by the Hon. Dr. Ambedkar, I raised at that time a point of order. I should first of all try to explain my point of order, because the other amendments depend upon that point of order. You will be pleased to notice that this amendment is drafted in a language which is highly insulting to the House. It says "In clause 2, in sub-clause (1), in item (a), for "Hindus, that is to say, to all persons professing the Hindu religion" *substitute* 'persons who are Hindus' and so on and so forth. In the next item the wording is "substitute" something. In part (2) it is again "omit" something. This is expressed in the imperative form. As Dr. Pattabhi on one occasion said, Dr. Ambedkar speaks in a professorial and dictatorial tone. This amendment is couched in that language. Not merely this, but all the amendments. I have examined one and all of them. They are in the form of correction slips, or orders by a superior officer of Government to his subordinates. So this is really a direction to the House to do this and that, imperatively. The usual form is that "for such and such thing the following shall be substituted" or that "the following shall be omitted". That is the form. I submit that the drafting has been done so carelessly and so much in the official style that they cannot be accepted as setting a new standard of courtesy to the House. All the amendments are couched in that language. I seriously ask the House to consider whether this method of wording the amendments will be acceptable at all. I, therefore, like in some of the amendments to cure this imperious form. I have suggested the usual form. And it is not merely the usual form in this House but in the previous House and in all other legislative bodies. The question is whether we should permit the setting up of a new standard entirely its own. You will be pleased to examine all the amendments and they are all couched like this. The point of order which I submit is whether it is in good form. If it is not, then the next amendment which I have submitted to cure this should be accepted in preference to this. Nothing will be lost but everything will be gained in decorum and official form. Sir, I ask you to give a ruling on this point.

* P.D., Vol. VIII, Part II, 5th February 1951. pp. 2404-23.

Mr. Chairman : I am not impressed by the speech of the hon. Member in regard to the facts to conclude that any point of order regarding my ruling has been made out. He was making certain observations to which the Hon. Dr. Ambedkar will in time reply. Threrefore there is no point for ruling.

Shri Naziruddin Ahmad : The two other amendments which I suggested depended upon the rejection of the form or otherwise of the amendments. That is why I want a ruling from you. If it is in good form, of course, we shall also indulge in such forms and the House can also be allowed to degenerate to that sort of form.

Then with regard to clause 2, one important point has been raised by the several amendments and supported by several hon. Members. It is that the Code should be made applicable to all persons in India. I was asked to sponsor this idea and when I raised the point of order, I did nothing of the sort at all, but my point is that the Bill is bad for the Hindus and when it is bad, this bad law should not be made applicable to all. A bad law can not be made good by making it applicable to all. If it is bad for the Hindus, it should be rejected. The point I was driving at was.....

Shri J. R. Kapoor : The fate should be shared equally by all the Hindus and non-Hindus alike.

Shri Naziruddin Ahmad : That is a form of logic which amounts to a joke and is certainly acceptable but seriously in a legislature this cannot be accepted. If a law is bad, it should not be extended to put pressure on those on whom it is going to be applied. Constitutionally this law will bring degradation. This point has been seriously raised outside the House; it has been freely talked about and it is more than certain that this law could not be taken before a court of law. We have passed several principles in the Constitution. We have worded the clauses in the Constitution in a general way with the result that they have landed us already into difficulties. The Constitution stands in the way of this Bill being passed.

Shri Tyagi : We will change the Constitution.

Shri Naziruddin Ahmad : My learned friend says if the Constitution is badly drafted and has landed us into difficulties, why not change the Constitution. I ask why should it be that you are at liberty to pass a law for the Hindus ? Why should there be a policy of distinction followed between Hindus and Muslims in their own

domestic sphere ? I think it is not logic. It is not good. The Hindus should remain Hindus at home and they should be Hindus in their religious practices. Similarly the Christians and Muslims should have their freedom of thought, worship and religion which has been granted in another part of the Constitution. I ask the House to consider whether in view of the number of defects noticed in the Constitution, it requires revision. I think it is easier within two years of the passing of the Constitution to amend it than it would be after two years. So it is time for us to amend the Constitution to make it possible to pass a good law affecting the Hindus. So far as religious and semi-religious matters are concerned the law could not interfere and at least it should not be dictated from the top. This is a kind of dictatorship which does persist in democratic society.

Shri Tyagi : Marriage and divorce do not come under religion.

Shri Naziruddin Ahmad : I believe the Hindu marriage is one of the *Samskaras ;* it is the tenth *Samskara;* it is part of their religion and it is idle to argue that it is not part of their religion. I say you may abolish religion and the law gives you freedom and this House is a sovereign House within the Constitution. You can abolish religion, if you like but will you go so far as that ? So far as this is concerned. I do not want to pursue it further but then look at the condition in which we exist today. We have no food. We had to spend Rs. 200 crores for importing food from foreign countries and to make us live for this year. *(Interruption).* We have no clothes. There are no shelters for many of our countrymen; we cannot give primary education at all but what we give is a free gift to the Hindus in the shape of the Hindu Code. If you want to make them happy, you must give them food, give them education.

The Deputy Minister of Communications (Shri Khurshed Lal) : This might have been a very good argument on the motion for taking the Bill into consideration. We are now considering a specific clause.

Mr. Chairman : I was waiting to hear the last words of his concluding remarks to know the inference he proposed to draw from his preceding observations.

Shri Tyagi : I want to know how is it that a Muslim is quoting our scriptures.

Shri Naziruddin Ahmad : We should not think of this Code but we should think of more and more constructive things which would

make the people happy, give them elementary education etc. In these dangerous times there is the other danger of the world situation deteriorating. War is approaching India step by step.

Mr. Chairman : I am very sorry. I do not want to interfere but I think the hon. Member is at sea on his arguments. He ought to proceed with his amendments.

Shri Naziruddin Ahmad : I was only submitting that this is not the proper time to go on with this Bill.

Shri Khurshed Lal : We are not discussing the consideration motion.

Mr. Chairman : I will ask the hon. Member to speak on his amendments. If he wants to say that so far as the particular amendments of Dr. Ambedkar are concerned, they are not right, I would certainely allow that but if he goes on to say that this Bill should not be proceeded with, I think it is beyond the province of any hon. Member at this stage to say so.

Shri Naziruddin Ahmad : I was encourged to make this suggestion only for one reason that it is understood that Government has decided to proceed with this Bill only for two or three days.....

Mr. Chairman : I would ask the hon. Member to proceed with his amendments.

Shri Naziruddin Ahmad : (*Interruption*) I rather think that many hon. Members have nothing to think of except interrupting . Sir, there are a number of amendments standing to my credit and I shall deal with them one by one. The first two amendments Nos. 16 and 17, were suggested to improve the form in which Dr. Ambedkar's motion has been tabled. They do not deal with any other principle except improving the form. Then, I come to amendment No. 19.

In part (c)(i) of sub-clause (1) of clause 2, after "Illegitimate", insert:

> "who, if he has attained the age of eighteen years, is himself a Hindu and"

I am sorry that a very large number of widely divergent subjects have had to be moved separately, and have to be argued upon in a lot. That is why some hon. Members seem to lose thread of the argument. Sub-clause (1) which I seek to amend, reads thus:

> "This Code applies—
>
> (c)(i) to any child legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section."

Shri Satish Chandra (Uttar Pradesh)**:** This has been read several times.

Mr. Chairman: Let the hon. Member proceed. To keep up the thread of the argument, he must be allowed to read.

Shri Tyagi: This thing about illegitimate child was not read.

Shri Naziruddin Ahmad: The child of a Hindu, particularly, if he be illegitimate, may not himself remain a Hindu. This sub-clause proceeds on the supposition that a child of a Hindu remains a Hindu. But, it is quite possible for him to change his religion. He may discard all religions ; he may be an atheist. He may become a Jew, a Christian or a Muslim, and then again be re-converted to Hinduism. The supposition that an illegitimate child of a Hindu is a Hindu presupposes that he does not change. As a matter of fact, he can change. If he changes his religion, certainly, he cannot be a Hindu, and cannot inherit his father's property and so forth. An illegitimate child of a Hindu father will inherit his fathers properties ; but if he changes his religion, he ceases to be a Hindu and therefore, he ceases to be the heir.

Shri Tyagi: A father can never have an illegitimate child; a mother only can have.

Shri Naziruddin Ahmad : That is a legal question. If a father cannot have an illegitimate child, this clause should have been deleted.

Shri Tyagi: The child is..... (*Interruption*).

Mr. Chairman : Order, order; let him proceed.

Shri Naziruddin Ahmad : My amendment says, "if he has attained the age of eighteen years, is himself a Hindu....." That is to say, after attaining the age of eighteen years, when he attains the age of discretion and is permitted by law to act in a legal manner, if he remains a Hindu, then, of course, he is a Hindu. He is a child of his father entitled to inherit and enjoy all the benefits of the Hindu Law. This amendment tries to remove a lacuna which exists in the drafting. An illegitimate child, if he attains the age of eighteen years and if he does not change his religion, then, of course, he could come in. That is what I have sought to clarify here.

Let us come to another amendment; it is of a drafting nature. It reads as follows:

In part (c)(i) of sub-clause (1) of clause 2, for "whose parents are Hindus" substitute "whose parents are or have been Hindus".

It may be that the parents of a child are Hindus; but they may change their religion. So, I want that in order to have this relationship.....

Shri K. C. Sharma (Uttar Pradesh)**:** May I draw the attention of the chairman to the convention of the House that all drafting amendments be left to the draftmen and the time of the House be not wasted ?

Mr. Chairman : There is no such absolute convention; it all depends on the particular amendment.

Shri Naziruddin Ahmad : This only shows that the hon. Member is not listening to the arguments, but is only trying to find and create objections. Although this is more of drafting nature, I think it involves a substantial thing. The question is this. You say that a child, legitimate or illegitimate of a Hindu, is a Hindu. Supposing the father changes his religion in that case, he is not a Hindu at the relevant time when the question arises. I therefore want to make it clear that he is a Hindu or has been a Hindu. It may be that a father was not a Hindu, but has accepted the Hindu religion at the relevant time. If you say, a man who is a Hindu, it means, who is a Hindu for the time being; he might not have been a Hindu before. That is why I am saying : "a person who is or has been a Hindu"; who has been a Hindu all along. The child of such a parent would be a Hindu. Suppose there is a Muslim who adopts the Hindu religion today. The question of the status of his child comes into question. Could his child, who was born at a time when the parents were Muslims, be a Hindu today because today the father is a Hindu ? That is why I have tried to change the clause. Though it is of a drafting nature, it has substantial effects. I submit that these small points require careful consideration. The question, in effect, is, if a man is converted to Hinduism today, whether his child, who may be a Christian, or a Muslim or a Jew according to the religion of his father before his conversion, would be a Hindu. This is a serious constitutional question, and I hope the House will seriously consider that. But, the difficulty would be for the Hon. Law Minister to carefully listen to these points and to reply to them, and for the House to follow all these arguments and replies. As a matter of fact, Dr. Ambedkar will say, "I oppose all the amendments" and the House will say, "We respectfully agree".

Several Hon. Members: Never, never.

Shri Naziruddin Ahmad : My next amendment, No. 21, I would repeat my argument, enforces a condition that a man, whose religion is in question, is a Hindu if he is a Hindu after attaining the age of eighteen years; because at the age of eighteen, he is entitled to act in a legal manner, and if he has attained the age of eighteen years, he may change his religion. Therefore, the option of a boy, on attaining the age of eighteen years, to change his religion, is provided for. That contingency has not been thought of by the draftsmen. Therefore, I am submitting this amendment for the consideration of the House.

I now come to my next amendment No. 23. It runs thus:

For part (d) of sub-clause (1) of clause 2, substitute:

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

You say that a convert to a Hindu religion would be a Hindu. It is plain commonsense that a man has freedom of conscience and religion and he would be fully entitled to convert himself to Hinduism. But, what happens to his rights and liabilities before he is converted ? I will explain the position. A Christian, a married man, is converted today to the Hindu religion. What happens to his wife ? Would the wife be automatically divorced because she is not a Hindu ? A marriage between a Hindu and a Christian would be illegal. I agree that a convert to the Hindu religion should be treated as a Hindu. But, what about his rights and liabilites before conversion ? There are numerous rights and liabilities. I do not wish to detain the House by detailing the various considerations which may arise on account of this. I simply put it generally that a convert should be a Hindu, subject to all the rights and liabilities he had before the conversion. Suppose there was a non-Hindu possessing rich property, and suppose he is converted to Hinduism. Should you ask him to lose all his property ? If he is to inherit from some one, before conversion, should he lose this inheritance after his conversion. There are laws relevant to this which occur to me, but I only submit that we should preserve all the rights and liabilities acquired by the man who is converted, before his conversion. The *status quo* of the rights previously acquired should not be disturbed. All those rights should not be lost simply by the conversion. Rights once acquired should not be allowed to be lost.

Liabilities incurred should not be allowed to vanish, all because of a later conversion. The conversion should not affect past transactions, past rights and past liabilities.

Then, my next amendment is that sub-clause (2) of clause 2 should be omitted. This sub-clause is to this effect :

> "This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion."

This sub-clause, I submit, is based on erroneous considerations, and on erroneous analogies. In part (a) we have said that this Code applies :

> "to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, ..."

And we also say that it applies:

> " to any person who is a Buddhist, Jaina or Sikh by religion."

But the Sikhs, I feel, do not very much appreciate the conferring of the so-called benefits of this Code on them. My friend Sardar Hukam Singh is ready to give up the so-called benefits of the Hindu Code now being conferred upon the Sikhs. So long as he remains a Sikh, I do not think he would very much appreciate the Hindu Code being applied to him and.....

Shri Tyagi : He can become a Hindu.

Shri Naziruddin Ahmad : But let Sardar Hukam Singh speak for his own community. I am only.....

Shri Khurshed Lal : Yes, you are speaking for yours.

Shri Naziruddin Ahmad : Then we come to part (c)(1) which says that the Code applies to any child, legitimate or illegitimate etc. A Hindu is a Hindu and the child of a Hindu should also be a Hindu. But what I say is this. Sub-clause (2) seems to be somewhat misplaced, because it states that the Code applies also to any other person who is not a Muslim, Christian, Parsi or Jew by religion. Looking at it from the drafting point of view, this is a circuitous way of drafting the thing, and it shows the piece-meal introduction of an idea. If this is the idea, why not say straight away that all persons who are not Muslims, Christians, Parsis or Jews are Hindus ? Instead of doing that, you first of all say that Hindus are first of all Hindus. Then you say that Buddhists, Jains and Sikhs are Hindus and then you say that the

Code will apply to other persons who are not Muslims, Christians, Parsis or Jews. I think the most straightforward and logical way of putting this definition would have been to say that all persons who are not Muslims, Christians, Parsis or Jews are Hindus. It comes to that. Therefore, I submit, at that time, there might have been some hesitation in the mind of the draftsmen and this idea was introduced at a later stage. Otherwise there was nothing to prevent them from saying what they actually meant.

But there is a snag in this clause 2, sub-clause (2). Does it necessarily follow that a man who is not a Muslim, Christian, Parsi or Jew is a Hindu ? He may be a communist, as is suggested by a friend here. Or he may belong to the religion of *Shintoism* as professed in Japan. Or he may have no religion at all. How can it be accepted as an inexorable principle that a man must be a Christian, Parsi, Muslim, Jew or a Hindu ? There may be a person who belongs to no religion, or there may be a person whose religion is apart from any of these great religions.

Shri Tyagi : Hinduism is a cocktail of all religions.

Shri Naziruddin Ahmad : Of course, to say that all the rest belong to the Hindu religion may sound very sweet to Hindu ears. But the question is whether we should force the so-called benefits of this Code on anybody ? Should we call anyone a Hindu and force the Code on him ? That is the point. Suppose there are some foreigners here, or their servants or subordinates or friends. We are encouraging tourist traffic and we can expect many such persons in India. And suppose one such foreigner dies while in India. Who will inherit his wealth ?

Dr. Ambedkar : You will inherit his wealth if he dies in India.

Shri Naziruddin Ahmad : The question is, are those persons who do not belong to any of those religions to be the victims upon whom the so called benefits of this Hindu Code should be forced ? The Hindu community is docile and in an absolute minority in the House, but outside there is a great deal of objection raised and that being the case, should these so-called benefits be forced on all ? Should you force the Code upon all the persons who are neither Muslims, Christians, Parsis or Jews, and because they do not belong to any

of these religions, does it necessarily follow that they belong to the Hindu religion ? Should the Code be applied to them ? That is the question which the House will have to answer. I submit that this sub clause (2) must be omitted because it seeks to enact a proposition which should not be accepted. Let us proceed gradually. You must not force the Code upon such persons. There may be some who follow some other religion or who have no religion at all, or a new religion may come into the world and to them the law should not be made applicable. The application of the law should be gradual. The impact of this tremendous measure should be gradual. In fact I was very much enamoured with part of the amendment moved by my hon. friend Mr. Kapoor. There was a great deal of sense in that part of the amendment which said that the Code should apply only to those persons who want it. That was also the purport of the amendment of Shri Jhunjhunwala. Of course there were some differences with regard to detail. But the important principle is that the Code should apply only to those who want it to be applied to them. Therefore this definition of a Hindu is not warranted. If the Hindu Code was not a controversial one and had been an acceptable one to all there would have been no difficulty. So by accepting that part of the amendment.....

Pandit Krishna Chandra Sharma (Uttar Pradesh) **:** It means that everybody should be allowed to make a law for himself.

Shri Naziruddin Ahmad : You are trying to force down the throat of a person a medicine which he does not like. However good the Code may be you cannot force it down the throat of the Hindu community.

An Hon. Member : Who says that ? We all want it.

Shri Naziruddin Ahmad : First of all you must take public opinion on your side. You must approach them gradually. Make it first optional and then if the law is good for everybody they will gravitate towards it. They will themselves push each other and compete with each other in getting themselves registered earliest. The law should attract people voluntarily and not by force. That is the great principle which underlies these amendments and suggestions. It is not a case of everybody making a law for himself but a case of a few persons forcing a law upon 33 crores of people.....

An Hon. Member : Who are you to say that ?

Shri Syamnandan Sahaya : That is also lately the correct position. Go ahead. Let them shout at the top of their voice.

Mr. Chairman : Hon. members should not go on speaking to each other while sitting. It will create confusion. Let the hon. Member proceed.

Shri Naziruddin Ahmad : That is why I heartily support the suggestion to make the application of the Code voluntary thereby robbing it of its sting. Then I dare say that if the law is good gradually every one will come to it. I therefore submit that the law should be made applicable to those who are fit for it.

India is a vast sub-continent where there are highly advanced people as also extremely backward people. The law is a good law to hon. Members because it is good to the community from which most of the Members come. It is an advanced law suited to the advanced community from which hon. Members come. But why should it be made applicable to hill tribes, aboriginals and backward people who have no education and who do not even have two meals a day. Why should it be made applicable to them by a stroke of the pen against their wishes ? That is the point which arises out of the suggestions contained in these two amendments. It is experience and not logic that should guide law. I therefore submit that the law should be made applicable to those who accept it and those who are fit for it. Gradually those who are semi-fit for it will qualify for it……..

Shri Khurshed Lal : That is why it is not being applied to you.

Shri Naziruddin Ahmad : I agree that I am too backward to appreciate the benefits of this law. This law is a jumble. It does not contain much of the Hindu law. It is borrowed from the Muslim law, from the Christian law and borrowed all the worst elements of those laws. Therefore I would prefer to be called a backwardman so as to please my hon. friend Mr. Kurshed Lal rather than be looked upon as civilised and be made to accept a law which is not applicable to me and which does not appeal to me either. The great difficulty is that the Government is committed to a principle rather prematurely and the people outside are against it…….

Shri Bharati : Who are you to say that ? Who said that ?

Shri Naziruddin Ahmad : Just go out and see. If you had gone to the Gandhi Grounds yesterday you would have seen something of that.

An hon. Member : Why did my hon. friend go there ?

Shri Naziruddin Ahmad : It is my business to be informed : not to suggest anything to them, not to control, guide nor mislead them. It is for me as a Member to ascertain public opinion. If I know that Hindu opinion moves in a particular way, even at the risk of being called backward I would bring it to the notice of the House. There is no point in trying to be fashionable and clever at the cost of commonsense and equity.

Some hon. Members asked me in an oblique manner, "Who says so ?". They think that the Hindu community has accepted the Code and are agreeable to it. I come from Bengal. At the request of the Government of their opinion they said that they were opposed to it.....

Shrimati Renuka Ray (West Bengal) **:** What have they said now ?

Shri Naziruddin Ahmad : If they are changing, I do not know about that.

Shrimati Durgabai : You too must change along with them.

Shri Naziruddin Ahmad : I do not think they have expressed any recent opinion. Apart from rumours their legal opinion duly approved by the Government has been sent by their Judicial Secretary and it has been circulated to us. Any other opinion has not been circulated to us. If they have been circulated to the private ears of any Members I cannot take any notice of it here. The Government of Bengal is against the Bill. The big people are against it.

Shri Sondhi (Punjab) **:** They have compromised, I am told.

Shri Naziruddin Ahmad : I do not think they have put themselves in a compromising position at all. Go to any Bar Association and listen to what they talk. They are getting tired of it. The very eagerness with which the Bill is sought to be pushed through the House.....

An Hon. Member : Is it all relevant to the amendment ?

Mr. Chairman : I would draw attention to amendment No. 31. It is quite relevant.

Shrimati Durgabai : He is only repeating himself.

Shri Tyagi : Since the Hon. Member has alleged that the Bengal Government was against this Hindu Code I want to know from him if the Chief Secretary of the Bengal Government is opposed to it ?

Shri Khurshed Lal : He is not the Government of Bengal.

Shri Naziruddin Ahmad : The Government of India circulated the Bill and asked for opinion. The various State Governments gave their opinion and those opinions have been circulated to us. I have no private communication with the Bengal Government. The public

opinions which have been circulated to us are there, any hon. Member can see them. There you will find that the Bengal Government opposes the Bill.

Pandit Malaviya (Uttar Pradesh) **:** Why should they see if it is not convenient to them ?

Shri Naziruddin Ahmad : They find that the law is not convenient to Bengal soil. What is more, all the judges of the Calcutta High Court— I suppose they should be regarded as educated people, not orthodox, not the rabble, they are fine, cultured, intelligent men. They are not mere orthodox men—gave their opinion jointly that they are opposed to the Bill.

Shri Raj Bahadur : May I know, Sir, whether it is permissible for the member to attack the very foundation and principle of the Bill now ? Is he speaking on clause 2 or on the whole Bill ?

Sardar Hukam Singh : It was an answer to the interruption on his statement that Hindus did not want it.

Mr. Chairman : Order, order. So far the observations of the hon. Member were relevant under amendment No. 31. But at the same time I would request him not to be very general in his remarks. He ought to confine his observations to the particular points made out by him in his amendment.

Shri Naziruddin Ahmad : The point before us is whether the law should be made applicable to persons who do not agree to be bound by it. If you do not give the option you will be forcing the law upon people who do not want it. That is why I thought that in order to strengthen that point the objection of eminent authorities like High Court Judges and the Government of Bengal was relevant. It shows that the people are against it—not the backward people but intelligent, civilised people who have some status in society. That was my purpose in referring to it.

I, therefore, submit that in view of all these objections, the law should be made applicable to those who are particularly enamoured of it, who think they will be benefited by it, but it should not be made applicable to one and all to those who do not want it. I submit that those who are opposed to the Hindu Code Bill are a minority in the House, but those who are in favour of the Bill are a microscopic minority in the country. The whole question is : is it enough for you to be fired with the idea that the Hindu Code is a good thing if the people do not want it ? In a democratic society you must not force

a benefit upon those who do not want it. The people do not want it. Therefore, you must not force this upon them. I therefore heartily support the two suggestions made by the two hon. Members that the law should be made applicable first to those who want it. Then if we find that there is ready acceptance, that it is palatable to the Hindus, that they want it, that they readily accept it, then this Parliament may later on extend it do other people or to other classes of people. That should be the proper way. As has been suggested, if once we accept this principle, make its application voluntary, the whole controversy will vanish. The bitterness of the majority outside and the minority in this House will disappear at once. Then there will be no question of a difference of opinion. If it is good it is good for the highest class of society. It is not good to the condition of people who belong to the middle classes and to the lower classes. It is for this reason that I think that the suggestion in that amendment should be accepted.

Then, one of my amendments is that sub-clause (3) should be omitted. That sub-clause runs to the effect that :

> "The expression 'Hindu' in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code."

It says in effect that though a man is not a Hindu, if the Code applies to him he is a Hindu. It begs the very question. It could have been said a Hindu is a Hindu ! The draftsman was not satisfied and he tried to make confusing words confounded by the addition of sub-clause (3). To whom would you make the Code applicable ? If you say a man is a man who is a human being it does not help anyone. It simply shows some confusion of mind. You cannot say that a Hindu is not a Hindu but that although he is not a Hindu provided the Code applies to him he is a Hindu. I think a simpler way of approach should have been far more satisfctory and better. If you say all persons having two legs and two hands are Hindus I have no objection. If you say all Hindus are Hindus even that would have made some sense. You say, all Hindus are Hindus, all Jains, Buddhists, and Sikhs are Hindus, the illegitimate children of those are Hindus and then all those are Hindus who are not Muslims, Christians, Parsis or Jews. You are not satisfied with this round-about and circumlocutory way of expression. You say that even though a man is not a Hindu he is a Hindu if this Code applies to him. You should be more straightforward, more logical, more clear in your expression. The draftsmanship of this clause

shows the hand of many a person but it has not been properly drafted. That is why there has been so much of confusion, so much of roundabout expression. I therefore submit that sub-clause (3) should be omitted. A Hindu should be a Hindu, one who follows the Hindu religion. With regard to Buddhists, Jainas and Sikhs, I should quite agree to them being included provided the Buddhists, Jainas and Sikhs agree to be bound by the Hindu Code. Those persons also are Hindus who are not Muslims, Christian, Parsi or Jew by religion. But you say that a person is a Hindu, though he is not a Hindu, if he is bound by this Code. Somehow or other that is a most unsatisfactory way of approach.

Shri Tyagi: He is a *de jure* if not a *de facto* Hindu.

Shri Naziruddin Ahmad : If you want to call a person a "Hindu", I have no objection. That is a simple way. You simply enumerate him as "Hindu". Why this circumlocutory, round-about and circuitous way of expressing it ? It shows, I say with respect, some confusion of thought.

5 P.M.

Dr. Amhedkar : You are more confounded than anybody else in this House, I am afraid.

Shri Naziruddin Ahmad : I have other amendments which I shall try to deal with tomorrow, if I am not interrupted like this.

The House then adjourned till a Quarter to Eleven of the clock on Tuesday, the 6th February, 1951.

●●

HINDU CODE—*contd.*

***Mr. Speaker :** The house will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 was under discussion. Mr. Naziruddin Ahmad will continue his speech.

Shri Naziruddin Ahmad (West Bengal) **:** Sir, at the very outset the House is in a very hilarious mood. I believe the subject is extremely important and it requires very grave consideration. Yesterday I dealt with some of my amendments. I shall now come to amendment No. 31 which reads:

After sub-clause (4) of clause 2 add the following new sub-clause :

"(5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any state from such time or by such stages as the State Legislature may from time to time by Act provide."

The Bill is highly controversial and it is improper even for those who believe it to be highly beneficial to the country to force this Bill upon the entire Hindu population. I submit that this House should not take this hasty step. I do not contend that this House has no jurisdiction, but I do submit that this House should not take upon itself the serious responsibility of forcing a law upon an unwilling people. This House was specially constituted to obtain independence from the British Government, and in due course through its constituent side it passed the Constitution.

The Minister of Law (Dr. Ambedkar) : Sir, is this relevant at this stage ? I do not like to interfere in the debate but certainly we have spent more than four hours in discussing a single clause.

Mr. Speaker : I was just watching for a minute or two whether the hon. Member's reference was leading to some sound argument that he was coming to.

Shri Naziruddin Ahmad : I was submitting that this House has not the mandate of the country to pass this Bill. This is a fundamental matter affecting the religious and social structure of India. Therefore, it is proper and relevant to consider our exact position. I am not going elaborately into all the history because that has been done at

*P.D. Vol. VIII, Part II, 6th February 1951, pp. 2425-83.

the proper stage, but I cannot forget the fact that a large number of hon. Members of this House are new Members and were not present at that stage. So, a very brief resume of those points may, I submit, be not irrelevant.

Mr. Speaker : I may inform the hon. Member that, so far as the representative character of this House is concerned as also its competency to consider such a Bill, that has been sufficiently thrashed out before and the present stage is not the proper stage of again raising that kind of an argument. We are now discussing the Bill clause by clause and clause 2 is before the House, so, he will restrict his remarks only to the provisions in clause 2 and the amendments before the House. Of course, the scope for that is wide enough, but not for questioning or even doubting the representative character of the House or its capacity to pass this Bill. That will be unnecessarily repeating what was said at the previous stages.

Shri Naziruddin Ahmad : Sir, I bow down to your ruling. I am not at all questioning the representative character of the House or its competency. But the question is that we have not consulted the people. Not that we have no jurisdiction, not that we do not represent the people, but on a social legislation of an all-embracing character like this we should have obtained some mandate. That was the point which I was going to submit. I do not wish to elaborate it. I wished to refer to this matter in order to develop my argument with regard to amendment No. 31. I want by this amendment to restrict the application of the Bill to the different States, upon the State, by Act, prescribing its application, and also limiting the conditions on which the Bill should apply, the persons or classes of persons to whom the Bill should apply and the stage or stages through which this application should come. Therefore, my point, so far as this amendment is concerned, is that the Bill should not be made applicable to all persons outright.

The State Government are in a better position to know the conditions of the people, their wishes and desires and their needs. It is therefore proper to allow each State to apply the Law and to such extent and through such stages as the Legislature, by Act, may provide. I know that so far as reports are concerned the Government of Bengal has opposed this bill. Though it was given out yesterday that in private conversation some hon. Member was told, some individual Minister in Bengal was in favour of the Bill, that is not the official position

taken by the Government of Bengal. I dare say that each State has its different problems to solve with regard to this Bill: its stage of civilisation, its state of economic condition and various other factors must, I believe, obtain in different degrees and in different circumstances in the different States. My point is that for those hon. Members who feel that this Bill is good there are a much larger number of hon. Members who feel the Bill is not good for them. Therefore, my submission would be to strike a *via media* . Let the Bill be accepted by those who think that it is good for them, but let them not force the Bill upon others.

Now, so far as the States are concened, the State Legislatures would be the proper authority to apply law, adapting the application to suit the differing circumstances of the case. Though the Hon. Minister in charge of the Bill is enamoured of uniformity in the laws, I think that it is a principle which should yield to practical considerations. I submit that the State Legislatures are the proper authority to ascertain the Actual opinion on the Bill and the application of the Bill should also be controlled by them. To this principle, there should be no objection. If, as is claimed, the Bill is a very beneficial one, acceptable to the people, acceptable to the Hindus of India, nothing could be lost by letting the State Legislatures express their opinion. The State Governments have their Departments through which they are in a position to know the wishes of the people and the members of the State Legislatures are also in a position to know the minds of the people. I therefore, submit that the application of the Bill in different circumstances and to different people should be left to the local Legislatures. If this is done, then much of the sting about the Bill and much of the objectionable features of the Bill would at once disappear and the controversy would immediately stop. The more the supporters of the Bill are convinced that the Bill is highly acceptable, the more they should be ready to subject themselves to this test of acceptance of the Bill by the local legislatures. I submit that this amendment raises an important principle and if the claims are as high as they are alleged then this principle should be accepted. It is conceivable that there are corners in the States where this law would Act adversely. There are various provisions bearing on divorce and there are various customs in different parts of the country for marriage and divorce. If we apply this Bill to them straightaway, that would take away the simplified marriage and simplified divorce and substitute complicated forms of divorce and marriage. To that extent,

their existing rights would be affected. There are, again, people who do not like to enjoy the rights of marriage and divorce as prescribed in this Bill. To them also, it would be a hardship. From any point of view, therefore, the application of this law to the peculiar circumstances of each State must be left to the local Legislature.

Then Sir, I have been jeered and jibed at many times.

12 NOON

Babu Ramnarayan Singh (Bihar) **:** No.

Shri Naziruddin Ahmad : That has been my privilege. I believe that the delay that has occurred was due to two reasons, the author of both the reasons being Dr. Ambedkar himself. First of all the Bill was sent to the Select Committee. For reasons best known to him, it came back from the Select committee in the form of an altogether new Bill. That led to some controversy, which took about six months' time. I submit that this portion of the delay was not due to me. If I had any fault, it was to point out the error and thereafter it was for the House to give a ruling.

Shri B. Das (Orissa) **:** Why apologise ?

Shri Naziruddin Ahmad : That delay was due to Dr. Ambedkar himself. I do not blame him for this. I do not attribute any motive to him.

Dr. Ambedkar : He forgives me!

Shri Naziruddin Ahmad : Probably, he wanted to improve matters and make matters worse.

The next reason for the delay was.....

Dr. Ambedkar : I do not think any hon. Member of this House has charged my hon. friend with dilatory tactics and I do not see why he should indulge in an explanation which is certainly not wanted, so far as I am concerned. He is wasting time.

Shri Naziruddin Ahmad : No, Sir. At least one word by way of explanation is necessary. Although I might not have referred to it, the charge has definitely been made and it goes in the proceedings to be read even after 100 years. I submit that the next reason for the delay was that in the Bill which was referred to the Select Committee, there were enormous numbers of substantial changes and those matters had to be put before the House just to argue that the members of the Select Committee had not a proper opportunity to consider them in detail. Those controversies are gone, but public memory is short and Ministerial memory is shorter. By a strange

coincidence, by a strange freak of fate, the delay is attributed to me. I think it is quite unnecessary to take it up and discuss it. So far as this matter is concerned, as Dr. Pattabhi Sitaramayya said on one occasion, dilatory tactics are permissible. If any Member is satisfied that a Bill must be opposed, dilatory tactics are permissible. He may oppose—so long as he may—fairly, and even unfairly, if he must. I submit that I do not take recourse to this extreme step. I believe that the Bill is a controversial one and therefore some amount of controversy is inevitable. The controversy is embedded in the Bill itself.

Dr. Deshmukh (Madhya Pradesh) **:** In Dr. Ambedkar ?

Shri Naziruddin Ahmad : Yes, of course. When the draft Bill was circulated, the Hindu Law Commission went round the country and collected a large number of opinions. The opinions were preponderantly against the Bill. These very women who are supposed to be anxious to liberate themselves through this Bill opposed the sittings of that Commission in different places in large numbers.

Shri Tyagi (Uttar Pradesh) **:** Clause 2 is now under discussion; what has all this to do with it ?

Mr. Speaker : The Chair is taking care of it. But if hon. Members want to do so, they may ; but in that case his speech will be prolonged and may go on till tomorrow evening. Therefore, let him go on in his own way. If he is irrelevant, the Chair will stop him.

Shri Naziruddin Ahmad : Sir, it is these interruptions which certainly create a certain amount of difficulty. When a question is asked, it certainly requires an answer. After all I am accustomed to these interruptions and nothing is more acceptable to me than these interruptions.

Sir, clause 2 is a very important one because it deals with the application of the Code. Many amendments have been suggested to this clause, the underlying idea of all of them being to prevent its universal application straightaway, considering the magnitude of the legislation, I for one feel that the house should take serious consideration of the suggestion to proceed slowly and to adapt the Bill to suit local conditions. If that is done, the impact of the Bill would be more tolerable and the objections would largely vanish.

Sir, I have done.

***Pandit Thakur Das Bhargava** (Punjab): Sir, in regard to the application of the Hindu Code to the various subjects and peoples who come within the purview of clause 2, I have to submit for your consideration a few words.

I agree with the previous speaker that the scope of clause 2 is very wide and therefore, all these matters which have been submitted for the consideration of the course are quite appropriate and should be considered by the House in regard to application of clause 2. But at the same time, I am of opinion that by practical considerations we are compelled to limit the scope of clause 2 to such persons to whom the Hindu law applied previously. I am not here to minimise the efforts of those who think that in pursuance of the directive principles we ought to have a Civil Code for this country. I am for it, the whole country is for it. We should, therefore endeavour to have a Civil Code for the whole country and I would very much like that Hon. Dr. Ambedkar who has done so much for this country in the matter of giving us a Constitution and bringing forward the Hindu Code which affects about thirty crores of people will in time bring forth a new Civil Code for the whole country.

But at the same time I do not think it is practicable to say that this Hindu Code should be turned into a Civil Code, (*an Hon. Member;* Why not ?) The question is being asked " Why not ?". I would certainly submit the reason. Now, as I have just pointed out. I admire the spirit of the previous speakers Mr. Sarwate, Shri Vidyavachaspati and Shri Jaspat Roy Kapoor, when they want one Civil Code for the whole country. As a matter of Act this attempt of Dr. Ambedkar in incorporating certain principles which ought to have been the real basis of the Hindu Code is simply laudable. This Hindu Code, according to some, is a Code which ought not to apply to Hindus alone, because this Hindu Code embodies principles which are not taken from the Hindu law alone. In regard to certain principles, they are so broad based that I should think they may eventually furnish a basis for having a Civil Code.

As remarked by the previous speaker, marriage is certainly one of the ten *samskars*. It is a religious affair. But in this Code we have 'got the provisions of the Civil Marriage Act also. My humble submission is that so far as the question of Civil Marriage is concerned it ought to have been contained in the Civil Code which we have all in view and which will be equally good for all the citizens of

*P.D., Vol. VIII, Part II, 6th February 1951, pp. 2430-52.

this country. Therefore, the complaint that this Hindu Code is neither based on Hindu Law nor on any universal law is correct to a certain extent and my view is that the principles of the Civil Marriage Act which are embodied in the Act of 1872 should not have been incorporated in the Hindu Code. I would, therefore, very much like that these provisions are taken away and the Hindu Code remained only a Hindu Code. This inter-mixing of the principles of the Civil Marriage Act into the Hindu Code should not have been allowed.

Now, Sir, I maintain that today we cannot have a Hindu law like the one which was propounded by our ancestors. In those days Hindus lived in an exclusive way. The impact of civilization and other religions had not begun so far as Hindus were concerned. Now in every Code, in the Muslim Law, in the Christian Law, and in the Hindu law we have got principles which are not germane to those laws alone but which as a matter of Act have been made universal by the impact of other forces. For instance in this Hindu Code we have got monogamy which is a special feature of the Christian Law. The authors of the Hindu Code want that daughters should be given a share of the property. Now this was not known to Hindu law, so far as married daughters were concerned for a very long time. Of course, there is no practice or principle which has not been experimented upon at one time or other by the Hindus.

[SHRIMATI DURGABAI *in the chair*]

This is a different matter. But today I think he will be a bold man who would like to say that the principles of yore be introduced in the Hindu Code. As the society progresses there is also a progress of the principles. Now if anybody wants to say that the laws of Manu should be introduced in Republican India, I think he will be a mad man. Does any one in this House want that no *Shudra* should be allowed to read the *Shrutis*? On the contrary, I for one welcome the Code for the very reason that Dr. Ambedkar is supporting it. Now all things have changed and all values have changed. The Hindus have burnt their boats so far. Now he will be a bold man who will come and say, " I want that the Caste system of the Hindus based, as it is, on birth should be introduced in the Hindu Code". I will have noting to do with this Hindu Code if it is based on the caste theory. I know that so far as the original Hindu law is concerned the caste system was not based on birth. I challenge anybody in this house, or outside, if he could convince me that the Hindu Law or the system of the Hindus was based on birth. But what do we find today? Birth

is the real basis of caste, whereas according to the strict notions of Hindu law and the *Shastras,* birth has no place in it whatsoever, we find that Hindu society is not what it used to be. Are we now going to introduce all those laws of Manu, for instance, that a *Shudra* cannot read the *Shrutis* etc.? Now we have finished with them.

So far as the criticism goes that the Code is very bad, so bad that it should apply only to Hindus, Muslims, etc., I am very sorry I have to challenge that statement and fight it. Some of the principles which are put in the bill are exceptionally good, so good that I would like to have this Hindu Code. As I stated. I am not an opponent of every clause and word in it. I want that all the good principles, which are consistent with the principles that we have accepted in our society today, should be passed in this House. I am opposed to certain provisions and I shall have occasion to speak about them at the proper time. But as regards the statement that it is so bad that it should not apply to Hindus or Muslims, etc. I for one do not agree with that statement.

I was considering the question whether it should apply to any but Hindus. Three or four motions have been made, by Mr. Sarwate, Mr. Indra Vidyavachaspati and Mr. Jaspat Roy Kapoor had something to say about it. In regard to them my submission is that, if it were possible to do so I would have myself supported those motions. But may I humbly ask the non-Hindus in the House if they like this proposal ? They do not like it.

Shri J. R. Kapoor (Uttar Pradesh) **:** The non-Hindus have already been brought within its scope.

Pandit Thakur Das Bhargava : It is entirely wrong to suggest that. So far as Muslims, Christians, Parsis and Jews are concerned, it specifically say that the law shall not apply to them. Where is my friend's suggestion that it has already been applied to Muslims Christians, Parsis and Jews ?

Shri J. R. Kapoor : I said non-Hindus excepting Muslims, Christians etc.

Mr. Chairman : Let there be no interruptions.

Shri R. K. Chaudhuri (Assam) **:** On a point of information, Madam, may I know whether the Hindu Law is not applicable even now to the Muslims, Bohras and Cutch-Memons ?

Pandit Thakur Das Bhargava : My friend has anticipated me. The present Hindu Law as we understand it does apply to many classes

of persons. It does apply to persons who do not call themselves Hindus. And so long they have never objected to it. So far as Sikhs, Jains, Buddhists are concerned, it is the Hindu Law which is applied to them. And it has been applied to them from times immemorial, from the time that the British Government was established. They have always been using it. Even Muslims have been using it. (*An hon. Member*: You are excluding them). We are not going to exclude them. This Hindu Code, according to clause 2, shall apply to all persons who are not Muslims, Christians, Parsi or Jews. So far as Muslims are concerned and so far as their law is concerned we have not changed anything and we have not made any law for them. We do not want to say that their customs as altered by the Hindu Law do not exist.

For instance take the Punjab. We were not bound by the Hindu Law as such, I am speaking of the villages of the Punjab. So far as the cities are concerned, many Hindus and Muslims are governed by the Hindu and Muslim Law. But so far as the rest of the Punjab is concerned we were guided or dominated, or we were governed, by custom. Custom was the first rule of decision in the Punjab so far as Hindus, Muslims and Sikhs were concerned. Even today it is custom which governs us. May I with your permission, Madam, just read out the Preliminary Section of the Punjab Customary Law by Rattigan ? it says :

> "Custom in this Province is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution, or alluvion and diluvion ."

In regard to the Customary Law of the Punjab, all the Hindus, Muslims and Sikhs in the village areas were bound by the Customary Law which practically was the same for all. And it has furnished a very good basis for the Civil Code because the customs were the same, the result was that we were wedded to the agnatic theory of succession and all the customs flowed from that. It is difficult for the Punjabis to accept the principle of inheritance of married daughters because the agnatic theory is there. In fact it prevailed in Assam also before Assam came into the domain of the Bengal High Court. If we find out what was the source of custom, all the principles and notions of Hindu Law which prevailed throughout the country were

the source from which this custom grew in the Punjab and in other parts. Not that custom is an exclusive feature of the Punjab only : in various parts of India custom has to a very great extent altered the original Hindu Law.

Shri R. K. Chaudhuri : I am sorry to interrupt. But may I ask whether the Customary Law in the Punjab will over ride the clear provisions of the Hindu Law, or what will be the position of the Punjab later, that is, after this Bill is passed ?

Pandit Thakur Das Bhargava : So far as the Punjab Law is concerned, I have given the source of law, i.e., section 5 of the Punjab Laws Act. I have just read from section 1 from the preliminary observations of Rattigan which is based on the Regulation of 1825 and section 5 of the Act of 1872, so far as Punjab is concerned. This is the present Law of the Punjab unless it is altered by this Hindu Code. This was my difficulty when I gave an amendment to that effect: leave the Punjabees if they want to be governed by their own custom. I have given an amendment in regard to clause 1 to the effect that Punjab should be excluded from the operation. The reason is that from days immemorial we have been governed by custom and we want to stick to that custom because that custom is the mixture of the Hindu Law as well as other notions of Civil Law.

I may be excused if I just divert for a minute to the present mentality of the Hindus, as a whole. I want to see a Hindu in this country who can say that he is a Hindu according to the old notions of Hinduism. The present mentality of the educated Hindus of this country is a sort of electicism. They are followers of Arya Samaj, Brahmo Samaj, some people have in the background of their minds or in the inner sub-conscience, certain conceptions which we have imbibed from Muslims, Christians and from other religions and we educated Hindus—I can speak for myself and some of my friends— want to have a sort of electicism. We take the best out of every religion and begin to think that this is the right thing and that this is Hinduism. Perhaps this may be true of the rest of the world also. Where is a true Christian to day who believes in the teachings of the Bible ? I can quote from the Muhammadan Law also. Where is the true Muhammadan to be found ? We know that the Prophet of Muhammadans married a girl who was below the age of 14. When the Sarda Act was passed, if hon. Members of this House remember very well, Mr. Mohemad Ali performed a marriage in the Queen's Garden just

to contravene the provisions of the Sarda Act because people wrote that the Sarda Act had made an inroad on the Muslim religion by taking away the liberty of marrying a minor. Those persons who have prejudices about religions may say whatever they like but to-day at the present moment, there is no orthodox Hinduism, no orthodox Muhammadanism and no orthodox Christianity. This is the bare truth and therefore, I am not surprised if Dr. Ambedkar has brought in a Bill which is consistent with the present times. Many of these provisions look new to those who are absolutely orthodox but at the same time, we must recognize that we have progressed too much on the lines of modern civilization and we cannot go back. If they want to bring back all those ideas of the past which have been practically given up by society in general, they are mistaken. As a matter of fact, Dr. Ambedkar has made an unconscious attempt.....

Shri R. K. Chaudhuri : We are getting more and more confused by what the hon. Member is saying. I want to make it clear whether the hon. Member wants that the present Hindu Code should go to amend the Punjab Customary Law and whether in the Punjab Customary law bigamy is banned or not. If bigamy is not banned and if as the hon. Member wants to have the Punjab to be excluded from the operation of the Hindu Code, may I know his views about bigamous marriage ?

Mr. Chairman : The hon. Member should know that he has already made his point clear and the hon. Member who is now speaking may be allowed to have his say and he need not be interrupted from time to time.

Pandit Thakur Das Bhargava : I am very glad that my hon. Friend has put a question to me. So far as bigamy is concerned. I have made my position absolutely clear when some time back I introduced a Bill in this House. That bill is designed to enforce monogamy in the whole of India even as regards Muslims, Hindus, Christians and everybody and including the Punjab. I want that so far as this Customary law is concerned, if there are any such customs which agree with the accepted ideals of society and humanity as a whole or a major part of that society, then those ideals we should adopt. I want that there should be no bigamy in the Punjab or elsewhere. This is my humble reply. So far as the general question that he has put is concerned whether this Hindu Code should modify a custom or not, I am of the opinion that so far as our custom is concerned, I want to stick to it in the Punjab, and we want to go on with that custom.

So far as custom and other things are concerned, if my hon. Friend has just studied the amendments which I have already given, he would see that I want good customs in all places should remain as they are, because I am not in favour of violently changing the law of the people of this land in this manner in which this Hindu Code seeks to do (*Hear, hear*). At the same time, I do not want some portions of this Hindu Code to be enacted for the whole of India. Since I got an applause with a view to pin me to something which I do not myself like, I want to make it absolutely clear that I am not against this Hindu Code. I want that certain portions of it should be enacted, but there are certain portions which I do not like, (*Interruption*). So far as certain principles in this Hindu Code are concerned, which are of a universal nature which will improve the society, I want that those provisions should apply to the Punjab and it is for this reason I am supporting this amendment. Hon. Members have not read the amendments which I have already given. The amendment runs thus:—

That for clause 2, the following be substituted, namely :

" 2. Subject to the provisions of section 1 this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion ;

(b) to any other person who is not a Muslim, Christian, Parsee or a Jew by religion ;

(c) to every woman who married any person was not a Muslim, Christian, Parsee or a Jew by religion ;

(d) to any child, legitimate or illegitimate, one of whose parents was a person who was not a Muslim, Christian, Parsee or Jew by religion ;

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion."

I want that this Hindu Code Bill as it is amended by this House and according to my wishes should apply to the Punjab. I do not want that so far as the Punjab is concerned the customs that we have got there should be violently changed by this Hindu Code but consistently with this I want to adopt such of the provisions of the Hindu Code as are acceptable. As for bigamy it should no longer exist in the Punjab. We want to have a monogamous Punjab.

Shri R. K. Chaudhuri : Then I withdraw my applause.

Shri J. R. Kapoor : Do I understand the hon. Member to suggest that different portions of the country and different sections of the

community should be permitted to pick and choose particular portions of the Code wich are acceptable to them ?

Mr. Chairman : The hon. Member must address the Chair and he should put the question through the Chair.

Pandit Thakur Das Bhargava : I am very glad that Mr. Kapoor should have put this question to me. Since I also put a question to Mr. Kapoor when he was speaking yesterday, this is tit for tat. I then asked Mr. Kapoor when he was speaking whether he wanted that every person should have liberty of choosing a particular clause and whether he shall be bound or not. His proposition was that out of the Hindu Code consisting of so many sections every individual be he a Hindu, Muslim, Christian or Parsee or whoever he may be able to choose a particular section to bind him and not others.

Shri J. R. Kapoor : On a point of personal explanation, I never said that. What I said that of all portions in the Code one should be at liberty to pick and choose any particular portion. There are different parts relating to marriage, adoption and inheritance etc. It should be open to one to pick and choose the part relating to marriage and say : "I want to be governed by this chapter." I never said that one particular section should be accepted by one and another section by another.

Pandit Thakur Das Bhargava : I am very sorry that my hon. Friend controverted the statement that I made. I put this question in those very words and he replied to that question and his reply was that he would rather like that even a particular section could be chosen. Unfortunately, he does not remember that.

Shri J. R. Kapoor : I will refer him to the speech which I delivered yesterday.

Pandit Thakur Das Bhargava : After reading the section I found the very thing that I am submitting.

Shri J. R. Kapoor : I suppose it is not so.

Pandit Thakur Das Bhargava : I take it that what my friend says is the true version.

May I humbly ask my Friend whether he wants that a person can choose out of the Hindu Code and say that so far as marriage is concerned he shall be found by the Hindu Law and so far as succession is concerned, he shall be bound by some other law ? That would be an impossible proposition for a person to say that he would be bound only by one Chapter of the Hindu Code and not by others. The whole

law is so interwoven and interconnected that a person cannot say that he would be bound by one provision and not by the other provisions in another Chapter. That is entirely a wrong proposition. Succession, maintenance, guardianship, all these provisions are, as a matter of fact, so inter-connected that it would be impossible to have a proposition like that. Yesterday also when I put my question, it was with a view to bring into relief the wrong proposition that my hon. friend was wanting to lay down for the whole of India. According to him, a Muslim may be able to say that he likes a certain Chapter and would be governed by that and in respect of the rest, he would be governed by the Muslim Law. I ask, is it possible, is it practicable, is it a proposition which can be laid before the House ? I submit, not, I submit that that would be a wrong approach to the question at issue. In fact, that is not the question at issue.

The question of even a Civil Code, as I have submitted, is not germane to the subject. While I admire those who want to have one Civil Code for the whole of India, I cannot agree, and I do not think that it would be a practical proposition to have one Civil Code for Muslims, Christians, Jews, etc. What was the reaction of our friend Mr. Naziruddin Ahmad ? He never agreed to that. He raised the question of fundamental rights under the Constitution, and said that you cannot have this Hindu Code. When it came to asking a question of him whether he would like to be governed by the Hindu Code, he said, " It is bad enough for the Hindus ; you want to give it to the Muslims, Christians, etc.". That was his attitude. I very humbly submit that as a matter of fact, the provisions of the Constitution Act have not been fully understood by my hon. friends who propose that this Hindu Code should apply to Muslims, Christians, etc. I can understand that in a light-hearted spirit. If they want to throw away the Hindu Code Bill they may say anything in order to show the absurdity of the provisions. But, I do not think that it is a feasible proposition to suggest that the Hindu Code should apply to Muslims, Christians, Parsis, Jews, etc.

Shri R. K. Chaudhuri: The principles.

Pandit Thakur Das Bhargava : My hon. Friend Mr. Chaudhuri says, and I think he will again applaud me when I say that the principles do apply. I quite agree that some of the principles even of the old Hindu Law are of such a universal nature that they apply to people of all religions, in all circumstances. So far as that is concerned, that would be the basis of the common Civil Code. Even

now, we have certain principles in our present law which are the basis of the common Civil Code, like the Sarda Act, Majority Act, etc.

Reference was made to articles 25 and 15 of the Constitution Act and some of the provisions in article 25 were even ridiculed. My hon. friend Mr. Nazuriddin Ahmad said that he cannot make anything out of the words "Subject to public order, morality and health" and that they were meaningless. They are not meaningless. They have not full meaning; not only full meaning, but are of very great significance. He seems to have failed to realise the significance of articles 25 and 15. It was said that under article 15, there shall be no discrimination, and that therefore, we cannot have a Hindu Code, a Muslim Code and other Codes. My humble submission is this. Although I would very much like to have one Civil Code for the whole country. I submit that it is not inconsistent with the provisions of the Constitution Act to have a Hindu Code, a Muslim Code and other Codes. I am very sorry to say that I have heard my hon. friends who are in favour of the Hindu Code Bill say that so far as the provisions of Articles 15 and 25 of the Constitution Act are concerned the provisions of the Hindu Code Bill are not consistent. For instance. I am very sorry to submit that I have heard even from the author of the Hindu Code Bill to say that so far as the Constitution is concerned, there can be no discrimination between brothers and sisters, between a male and a female so far as the Hindu Code is concerned.

Dr. Ambedkar : Only on grounds of sex.

Pandit Thakur Das Bhargava : I am coming to that. That is one proposition that has been put forward that on grounds of sex there cannot be any discrimination and article 15 of the Constitution will stand in our way. The other gentlemen, who are opposed to the Hindu Code, also rely on articles 15 and 25 and say that there can be no discrimination. May I humbly ask the Hon. Dr. Ambedkar, if there could be no discrimination on the ground of sex, why he has got so many provosions in the Hindu Code itself which discriminate between the sexes……..

Dr. Ambedkar : There is no provision which discriminates only on the ground of sex.

Pandit Thakur Das Bhargava : This provision of one-fourth for a married daughter and one-half for the unmarried daughter ; why is there a different succession if a man dies and a different one if a woman dies ?

Dr. Ambedkar : That is not anything based on sex only.

Shri Tyagi : On death also.

Mr. Chairman : I think the Select Committee report has made no such discrimination.

Mr. K. C. Sharma (Uttar Pradesh) **:** That article is not under discussion now. He may come to his amendments.

Pandit Thakur Das Bhargava : As a matter of fact, even this discrimination that the married daughter may not have a share in the father's property is not based on ground of sex alone, as my hon. friend says. My submission is that it is consistent to provide in this Hindu Code that a married daughter shall not succeed to her father's property. I was just now on the argument propounded by the Hon. Dr. Ambedkar. On the question of maintenance, a wife is entitled to be maintained by the husband. Is the husband also entitled to be maintained by the wife ?

Shrimati Renuka Ray (West Bengal) **:** Why not ?

An Hon. Member : There are many such instances.

Pandit Thakur Das Bhargava : My hon. Friend asks ; ' why not', I am very glad that she has adopted this gallant attitude. Has she consulted her sisters ? Our Chairman does not say so. I submit that it is a very wrong principle to suggest that on the basis of sex, equality should be enforced in such a manner which is not consistent with certain conditions of life. I maintain that the Hindu Code would not violate any provision if we maintain that a married daughter does not succeed to the father's estate. She succeeds her husband or father-in-law. I am dead certain that unless and until we recognise the rights of women, unless we give them full rights, we shall be losing very much in certain strength of character which arises only if women are economically independent. I submitted when I was speaking at the consideration stage, and I maintain it now that we are all committed to that and we cannot but give rights to our sisters; we must see that we give them full rights. The only thing that I am opposing is the manner in which those rights are given.

So far as the Punjab is concerned, as I submitted, we are wedded to this theory that a married daughter when she goes to her husband's family, she becomes a part of that family, and is the pivot of that family. Therefore, the trouble with the Punjab is that they cannot possibly accept that a married daughter should succeed to her father's estate. So far as

the other principles are concerned, we are still being governed by them and as I submitted they are principles which would be a better basis for a Civil Code rather than for a Hindu Code. This is not discrimination on grounds of sex at all but due to certain conditions of life. Suppose you pass a law to-day that all males should cook food and that females should not; will that be right ? That will be entirely wrong.

Pandit Krishna Chandra Sharma (Uttar Prades) **:** What is the clause on which the hon. Member is speaking ? Is all this relevant to the clause under discussion ?

Pandit Thakur Das Bhargava : You have maternity legislations referred to in the Factories Act. Should all that legislation apply to males also ?

Shrimati Renuka Ray : How is all this relevant to clause 2 ?

Mr. Chairman : Too many Members speaking at the same time leads to nothing but confusion. I think the hon. Member now speaking may be allowed to go on.

Pandit Thakur Das Bhargava : Those who raise the question of relevancy, I submit, do not seem to know what is relevant and what is not. They have all heard my friend Mr. Naziruddin Ahmad and he covered a very wide ground and in the reply also one has to deal with all those points touched upon. You cannot say that, that was relevant and this is not. If what he said then was relevant, what I say now is also relevant. Moreover, so far as clause 2 is concerned, it is a very wide one and so the question of relevancy cannot arise in connection with this clause. The question whether the Hindu Code applies to Muslims or not was dealt with by Mr. Naziruddin Ahmad, and in views of that, I find it impossible to understand how my friend Shri Krishna Chandra Sharma—the able lawyer that he is,—can say that what I now say is not relevant.

Shri Raj Bahadur (Rajasthan) **:** Sir, on a point of order, can an hon. Member of the House take the seat of the Leader of the House ?

Mr. Chairman : The hon. Member may proceed to his own seat.

Shri Tyagi : What is the matter ? I would like to know why I am made the target of this laughter. These seats are, after all for being occupied by someone. I found that one was vacant and I occupied it.

Mr. Chairman : The hon. Member might have exercised his right of freedom of movement in this ; but there is no more to be said on this matter.

Pandit Thakur Das Bhargava: The question of equality before the law has been raised. And various other matters have also been raised. Articles 25 and 15 were referred to and it was stated that the provisions of those articles are being violated, that in view of those articles, we cannot enact a measure of the nature of the Hindu Code. But as a matter of fact, that is not the case. I would submit that even with the amendments now suggested by Dr. Ambedkar, this section will not read quite well. That is why I have suggested my amendments.

Some complaint was made by my Friend Mr. Naziruddin Ahmad that there is an attempt to apply the Hindu Code to persons who are not Hindus. But my humble submission is that my friend is not correct in saying that because if my friend takes the trouble to see to whom it applies now, he will find that it applies even now to many persons who are not Hindus in the sense in which the word is popularly understood even to-day. If you look into Gour's Commentary—I think it is page 165—you will find that a good many persons who do not call themselves Hindus are still governed by the Hindu law. It governs many who are geographically Hindus, if I may say so. The Hindu system is not a creed. The term " Hindu" has a geographical significance also. Therefore, all those who are not bound by any other special law like those of Muslims, Christians, Parsis or Jews, they are all bound by the Hindu Law. This is no innovation brought in by Dr. Ambedkar. He does not want that those who are not Hindus should come under the Hindu Law. This argument raised by my friend Mr. Naziruddin Ahmad is a wrong one. It is not a question of conversion at all. If the Hindu law applies to a person, he does not thereby become a Hindu. If he adopts some of the rules of succession, of divorce or marriage of the Hindu Law, he does not become a Hindu. And I may also say that this kind of thing does not help us either. What is the use of increasing the number of Hindus or Muslims ? The days of proportionate representation or special representation are all gone. I don't care if a man is a Hindu or a Muslim or Parsi or Jew, as long as he is a good citizen. I do not want anyone to give up his religion. The argument of my Friend Mr. Naziruddin Ahmad is based on the old psychology that the proportion of Hindu must be more, or that of Muslims must be less or that Parsis should be more and so on and so forth. As a matter of fact the subject matter of clause 2 is taken from the old Hindu Law. The first part of it says that this Code shall apply to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or

developments, including Virashaivas etc, But my humble submission is that this part of the clause is redundant. If it applies to Hindus, that is quite sufficient, and there is no point in saying that it applies to all forms of the Hindu religion or developments of the Hindu religion. Therefore, in my amendment. I have suggested that this Code applies "(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion."

And the next amendment is in the nature of a negative proposition. It defines those persons who are not bound by this Code. There is the customary law and the special law. For instance the Muslim of the Punjab can say, that he is governed by the customary law and not by the *Shariat*. Those laws which apply to Muslims are not at all touched by this Code. Those customs are all quite safe. My amendment says that it applies :

> (b) "to any other person who is not a Muslim, Christian, Parsi or a Jew by religion ;"
>
> (c) to every woman who married any person who was not a Muslim, Christian, Parsi or a Jew by religion;
>
> (d) "to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section ;"

Part (d) I submit is redundant, When there is a child, legitimate or illegitimate to parents who are Hindus, then there is no question. The child is a Hindu. Not that it is wrong to say that the child is a Hindu, but that is quite superfluous. The child of Hindus is *ipso facto* a Hindu. I have, on the contrary, omitted this part and proposed that it should apply even to any child legitimate or illegitimate, one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion.

There is a proviso to the clause, May I humbly submit in regard to this proviso that it was probably introduced for some other purpose. If taken literally it would exclude those persons whom you do not want to exclude. It would exclude all the Punjabees. The wording of the proviso is very wide. If it is allowed to remain as it is, section 5 of the Punjab Succession Act will come into conflict. The proviso reads:

> "Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters."

It means that the Hindus of the Punjab will not be governed by this Code.

An Hon. Member : What is the harm ?

Pandit Thakur Das Bhargava : The harm is this. I want the whole of the Punjab and India to come under the Code. There should be some uniformity in regard to our laws. I have given an amendment that so far as our customs are concerned they should be preserved. I have even suggested that the sections of the Code should be relaxed in such a manner that if our Provincial Assembly wants certain portions of the Code to be applied they should be applied. I have gone further and said that in regard to our customs, such as relating to succession, we should be allowed to own our law. At the same time I do not want to be cut off from the rest of India. In fact that is the basis of the Hindu Code. If I had heard the speech of Dr. Ambedkar, which he made moving for the consideration of the Bill, he said clearly that he wanted the whole of India to be governed by this Code and that such things as had crept into Hindu practices in their pristine glory should be repaired. If I remember his words he said that those damages should be repaired. I am one with him and I do not want that the whole of the Punjab should be taken away from the operation of the Hindu Code. I would rather like to be governed by the Code which applies to the whole of India rather than plough my own lonely furrow. Therefore I am anxious that this provision should either be taken away or amended in such a manner so that these persons may not be excluded.

If my amendment is accepted sub-clauses (3) and (4) need not be there at all. According to me all those persons to whom the present law applies do come under these five categories which I have mentioned in my amendment. My amendment really seeks to attain the very same object which the Mover of the Bill has in his view. Only the wording is different. But I agree with him that so far as the scope of the Bill is concerned it should be extended to all those persons to whom the Hindu Law at present applies and only Muslims, Christians and Jews should be excluded. It is not that I want their exclusion for any purpose but for the purpose that those people themselves would not like to be governed by the Code. If they think that they would like to be bound by the Code let them pass a resolution or make a proposal to that effect. I want that the Hindu Code should

be the real basis of the Civil Code. I do not want that such principles should be introduced in the Code which will not accord with the principles of the future Civil Code.

In regard to adoption I submitted then and I submit now too that the customary adoption in the Punjab is based on the Civil Code. It does not have any real significance.

Mr. Chairman : Would the hon. member like to continue his speech after lunch or finish now in another five minutes ?

Pandit Thakur Das Bhargava : I would like to continue after lunch.

The House then adjourned for Lunch till half-Past Two of the Clock.

The house re-assembled after Lunch at half-Past Two of the Clock

[MR. DEPUTY-SPEAKER *in the Chair*]

Pandit Thakur Das Bhargava : Sir, when we adjourned I was speaking on the provisions of adoption contained in this Code. I was submitting that in view of the fact that many Members of the House desired it there should be a Civil Code instead of a Hindu Code, I was submitting that certain provisions relating to adoption under the Hindu Law have been modified by custom. The present position is that this old system of adoption has to a very great extent been modified and now many notions of a character, not strictly religious, have crept into the very idea of adoption. The old idea that by adoption an adopted person becomes the son of a person adopting, has to an extent faded away. In the Punjab, so far as adoption is concerned, according to custom any person can be adopted without any ceremonies. It is in the nature of the old Roman nominees system that an heir is appointed in the Punjab for carrying on the name of the family so that a person older than oneself can be appointed an heir and so such ceremonies are required as are required under the Hindu system of adoption. Moreover, even the incidents of that relationship are a bit different from the incidents which we find in regard to the system of adoption under the Hindu Law.

Shri Tyagi : In the Punjab your son can be elder to you in age ?

Pandit Thakur Das Bhargava : In fact, the question which my friend is asking is really not germane. As a matter of fact, when I gave the conditions under which a person could be appointed an heir,

an heir is appointed—a son is not created by the Act of appointment of an heir. That is the difference. Under adoption the adopted son carries on the name of the family, perpetuates the name of the father and that is the way in which the family continues. In Punjab the family continues in another way. An heir is appointed and he carries on the name of the family, so that it is not true to say that in the Punjab the customary appointment or adoption of an heir is tantament to creation of a son. Whether that is not there, under the Hindu Law the underlying idea was that a son was created by adoption, so much so there was a rule in the Hindu Law that the son of a lady who could not be married to the father could not be adopted and therefore there was some sort of ban against a daughter's son so far as adoption was concerned.

Now, under the provision of the Hindu Code it is necessary that for adpotion a man should not be married, that he must be less than fifteen years of age. These incident will not find favour in the Punjab, this provision will be too much to tamper with the custom of the Punjab which does not contemplate any restriction as regards age or ceremonies or other restrictions which are irksome.

Shri Tyagi : Because the son is a man to the father in the Punjab.

Pandit Thakur Das Bhargava : The child is the father of man in the whole world. So even now in the Punjab there is the custom of appointment of an heir which is akin to adoption. My subcription is that Dr. Ambedkar has been kind enough to those systems of law which have been prevalent in the South, for instance, the *marumakkathayam*. Arrange the Code in such a way that there is no violent conflict for those who follow different customary laws in the matter of marriage, adoption etc. and see that their systems are allowed to continue. This Code goes to the root of the Hindu Law in certain matters. So far as they are wholesome we are prepared to accept them but in so far as there are violent changes which conflict with the notions of the people, I would very humbly submit to Dr. Ambedkar that where he considers the provisions of the Code at a later date he will be indulgent enough to see that there will be to violent conduct. I know when he introduced this Bill he was pleased to say that he would try to see his way to accommodate and would be prepared to accept certain amendments which partake of the character I have narrated above.

In regard to two matters—the question of adoption and the question of inheritance of married women—I must submit there will be such a violent conflict with the notions of the Punjabis in these two matters

that they will not be prepared to accept the provisions of the Hindu Code. Even if it is forced down their throats, I submit there will be such a revolution in the society—I said on the last occasion that there will be revolt; there will not be revolt because we are too strong. There will be revolt in our minds and we will certainly not accept a custom to be forced down our throats that we cannot digest. One effect of such a step will be that when the father dies, since you are giving the father the power to make his will in any manner be pleases, the result will be that there will be forced wills by virtue of which the daughter will be disinherited. I am not against the inheritance of the daughter as such. Where you can have it, where it is in consonance with the ideas of the people, have it by all means. There is nothing objectionable in it. But the only point is that it is not expedient to have it in some places where it is not wanted. In the Punjab the daughters do not enjoy such a position that you can say that they do not get anything. I know that in Madras and other places the daughters are not treated so favourably, perhaps, as in the Punjab. In the Punjab at the time of marriage so much is given to the daughter in dowry. If you go to any wedding function in the Punjab—to the rich man's place—you will find the dowry consists of thousands of rupees. So far as self-acquired property of the father is concerned, since the last 50 years our High Courts have made a change. Before 1909 the daughter did not even get a share in the self-acquired property of her parents. Now if there is no son, the daughter succeeds to the self-acquired property among all the people. But I do regard that this is not sufficient justice with the women of our country. I want that so far as the unmarried girls are concerned they may get as good a share as the son does—I do not want to give her just a half. So far as the married daughter is concerned I want that she should be entitled to inheritance, along with her husband, to her father-in-law's property. That is to say, as soon as a marriage is performed, the husband and wife must unite their properties also and you can frame rules by virtue of which a married lady gets full rights of property.

I do not want that the ladies of this country should not get full rights, but I do not understand why a lady should get a right in her father-in-law's property as well as in her father's property. To that I object. I want that our notions of society and family should not be rudely shaken. At present, the son is the pivot of the family. He continues the family. The woman goes to another family and becomes

the nucleus of that family. Let this contiune. Unless and until our whole notion of society changes, my humble submission is that we should not change it abruptly, because this change will be great that ultimately the ladies will lose on both sides. At the time of marriage, the sons will say, "Why give her so much dowry ? She is going to get inheritance". At the time of the inheritance, the father will fall on the lap of the sons and they will get some deed or will by which the daughter will be deprived. Both ways, the woman will get nothing. This will not be a fair way of treating women.

When you ask us, the people to whom this Bill will apply, I would certainly submit that if you want to have this Code in such a manner that you do not respect our wishes and our customs which have been in existence for the last several centuries, if you want to create such a conflict, then ultimately we shall have to say, " You kindly leave us to our own fate". This is my humble submission. Though I am in favour of the good provisions of this Bill, I would very humbly request Dr. Ambedkar and those others who are very much in favour of it to kindly see that our wishes in this matter are respected and we are allowed to have such customs or such provisions of the law as the majority of the people in our particular province want. This is, in essence, what we have given an amendment about in regard to Part I of the Bill.

Shri Tyagi : How will the majority view be obtained ?

Pandit Thakur Das Bhargava : In the Punjab, the majority view is clear. You go to any village or town and ask any person who will be affected by the Bill; he will tell you exactly what I am submitting today. There is absolutely no difference of opinion, so far as Punjab is concerned. Therefore, my humble submission is that while you apply this law to Punjab—and I wish this law to be applied to Punjab— you apply it with these reservations. This law is not bad, it is entirely wrong to suggest that there is anything inherently wrong about it. There is nothing wrong about it. We have lived for so many centuries and we must repair the damage done to our nation. Therefore. I am entirely in support of this Bill, but if the notions and customs which are widely prevalent among the people and which are very delicate are upset, there will be such a great amount of litigation in the Hindu society. Every family in Punjab will be affected. There will be nothing but litigation. You are, in deference to public opinion bringing in a provision of the Partition Act. What will be the result ? On every

death, the question will be : " Let us see how we evaluate the property of the father". The property will be evaluated and the sons will not have sufficient funds to buy off the daughter's share and trouble will ensue. I am speaking from my experience as a lawyer for more than forty years.

Pandit Krishna Chandra Sharma : You have been working in the criminal courts.

Mr. Deputy Speaker : Hon. Members will address the Chair.

Pandit Thakur Das Bhargava : I for one have very great regard for my friend, who is also a criminal lawyer. All the same, my notions of a criminal lawyer are quite different from his. I have been practising on the criminal side as well as the civil side, but I take pride in the fact that I am a criminal lawyer. At the same time, I do not go about with my eyes shut. If a criminal lawyer is true to the description which my friend has in mind, he should know what is passing on in society. As a criminal lawyer, my friend should know what is passing on in and around Meerut, and when I am speaking about Meerut—I do not know what my friend's personal notions are—I know the conditions in Meerut and I know also that they are not very different from the conditions in Hissar and Rohtak. Therefore, when I speak for Punjab, I also speak for my Friend and Meerut side, because in olden times Meerut was a part of this side of the Punjab.

Pandit Krishna Chandra Sharma : For my friend's information, I may say that Hissar is famous for bulls while Meerut is famous for cows.

Shri Tyagi : May I know what have bulls and cows to do with the Hindu Code ?

Mr. Deputy Speaker : Hindu Code relates to marriage, you see.

Shri Raj Bahadur : May I know whether cock and bull story is permitted in the House ?

Mr. Deputy Speaker : Order please.

Pandit Thakur Das Bhargava : When you refer to the question of marriage, I must submit that the introduction of the principles of civil marriage in this Hindu Code is another point which must be considered specially by this House. If this is a Hindu Code, why bring in the civil marriage ? I want that the provisions in regard to marriage may remain as they are. There is no use repeating them here. If you want to make a Hindu Code which will not apply to other people

like Musalmans etc. then do not bring in civil marriage here. If any Hindu wants to marry in that manner, he will marry according to the civil contract to which the Muslims, Christians and everybody has recourse. That is our joint Civil Code. Therefore, my humble opinion is that this affair of the civil marriage should not be included here.

I do not want to refer to all the provisions of this Bill. I have spoken because I thought that we should at this stage define our attitude and tell Dr. Ambedkar what we feel about this Bill and what is perhaps the general feeling in the country. This Bill is not bad, and since we have decided that we should proceed with it, we may pass such provisions of the Bill as are good. In regard to those provisions. I do not want to stand in the way or adopt an attitude which smacks of dilatory tactics or which shows that we do not want the Bill to be passed. I want to make this point clear because it may be in the minds of many people that those persons who make long speeches do not, as a matter of fact, want this Bill to be passed. That is entirely wrong. So far as I am concerned. I want the Bill to be passed but I want those who are very much in favour of it to kindly see that such provisions are not passed as are in very great conflict with the notions and customs of the people.

***Sardar Hukam Singh** (Punjab) **:** Sir, I sympathise with the attitude of my hon. Friend Pandit Thakur Das Bhargava. What I understood him to say was that he wishes the Code to be passed but he does not wish that it should apply to him and the other people in his part of the country, Really, I have the same thing to say. I also wish that the Bill be passed, but that it should not be applied to me. I wish I could have made a similar motion and it should not have smacked of a particular community but what I found was that the application of the Code was not to certain territories but to certain communities. Therefore, I thought it fit to move this amendment that it should not apply to the Sikhs.

Sir, I am not one of those who wish the society to stagnate. I believe in progress and I want to move with the times. I can claim that the Sikhs are a progressive section of the society. But why I do submit to the House that the Sikhs should be excluded from the application of this Code is because it contains certain provisions which are offensive to the customs and usages that we have been following for so many centuries.

*P.D. Vol. VIII, Part II, 6th February 1951, pp. 2452-62.

Panditji made a reference to the proviso to sub-clause (2) of Clause 2 which reads :

> "Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters.".

What I understood him to say was that perhaps this might save the custom and usage prevalent in the Punjab. But I differ from him, because sub-clause (2) reads:

> "This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion;"

and read with this sub-clause, the proviso does not refer to the custom or usage of the Hindus or Sikhs. Therefore, in my humble opinion this would not save the custom or usage and I, therefore, do not entertain his hope.

Pandit Thakur Das Bhargava: I never said that this proviso would save our customs or usage. What I meant was that if it is proved that we are not governed by the Hindu Law—the words are, " provided that if it is proved that such person would not have been governed by the Hindu Law"—Punjabis would not be covered by this proviso. But our customs and usage will not be saved. It applies to all the Hindus. What I meant was that, as a matter of fact, our customs and usage should be saved by another provision which should say that we are allowed to be governed by our own customs, etc. But this proviso will introduce a certain amount of uncertainty.

Sardar Hukam Singh : Sub-clause (1) of Clause 2 definitely lays down that the Code will apply to Hindus, Buddhists, Jains, Sikhs and also converts to Hinduism.

Therefore, so far as I am concerned, there is no ambiguity at all. Be that as it may Panditji no doubt agrees with me to this extent that our custom and usage would not be saved at any rate.

Sir, if a uniform Code had been attempted for all the citizens of India, then perhaps I would not have stood up and raised this objection, even if I had been called upon as a Punjabee to make some sacrifices. I would have made sacrifices in the hope that if we can grow up as a united nation, as one people, certainly some sections will have to make some sacrifices. But that is not the object here. No attempt is being made to weld all people into one nation by this Code. There

is discrimination between one community and another. Therefore, I think I am perfectly justified in opposing it.

I should however make it clear here that so far as some Chapters of this Bill are concerned, I am in complete agreement with them. I am only opposed to three portions of it. If different parts had been put before the House separately, certainly I believe that most of it would have been passed without any controversy. But as it stands we have to take them as a whole and, therefore, I stand up to oppose them, because I cannot permit them to be passed without my voice being heard.

The provisions to which I am opposed are (1) those relating to marriage and its dissolution by divorce, (2) adoption and (3) inheritance. (*An hon. Member:* What is left then ?) Much remains even then. It has been said by Panditji that it applies to those persons who were already governed by Hindu Law. This is correct. But if we have consented to be governed by Hindu Law, that does not necessarily mean that we should be compelled to revolve round the wheel even though it goes into foreign spheres and borrows certain things from other religions and other laws simply because I have once been dragged into it. I should not be compelled to revolve round it, though it does not remain within its own sphere.

Then again, Sir, there is a misconception. The Hindu Code Bill says that the Sikhs are governed by Hindu Law. Now section 5 of the Punjab Customary Law—which has already been quoted by my hon. friend Pandit Thakur Das Bhargava says:

> " Custom in this province is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dowery, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution, or alluvion and diluvion."

Now I ask : When I am governed on all these subjects by customary law, where is the Hindu Law that governs me ? I find that there is one subject that is not put down as such, namely, maintenance with which this Hindu Code deals. It is not put down in the Customary law that I am governed by the usage on that subject also.

I was submitting that I have three subjects on which I have certain objections and the Sikhs do not wish that they should be forced to be governed by the Hindu Code that is being proposed here in respect of them. First I referred to marriage and the dissolution and divorce connected with it.

3 p.m.

[MR. SPEAKER *in the Chair*]

Sir, so far as the Sikhs are concerned they have a very simple form of marriage. We might call it sacramental or *dharmic* marriage. It is known as *Anand marriage*. It is a simple and secular form of marriage. The couple sit down in the presence of the *Guru Granth Saheb,* they take a vow that they will remain united for ever—so long as they are alive, of course—and prayers are offered. Of course I might be confronted with this that this would be covered, and that it is not touched by the Hindu Code. But there are some implications which I am afraid would really affect me. There are certain degrees of relationship which are prohibited from marrying each other and these are strictly observed in all civilised societies. But so far as our society is concerned the list is not very large. Marriage between cousins has often been allowed. There have been many instances of marrying father's sister's daughter or mother's sister's daughter and they have not been considered as within the prohibited degree. And I tell you that you are driving your society towards that direction. We are far ahead of you. You are coming to that way. Do not be surprised at that. Now that you are proposing to give a share to the girl you are sure to come that way. You will have to march towards that direction.

An Hon. Member : What about Sikh Jats ?

Sardar Hukam Singh : What I am submitting relates mostly to Sikh Jats. The custom that I am talking of prevails mostly in Jats and Jats observe that. Ninety per cent of the Sikhs are agriculturists and live in villages.

I was asking now that you propose to pass this legislation, by which the daughter shall have a share. Here I might make my position clear and nobody need feel perturbed. I am for a share for the girl. I am not opposed to it. But when you proposed that, you will have to take the risk that this long list of prohibited degrees shall continue diminishing and shall contract as time passes. I suppose the present list is not as long as it used to be under the strict Hindu Law. And it is sure to contract as time passes.

Shri Tyagi : It will come nearer home.

Sardar Hukam Singh : Surely. You cannot keep the two things apart. When you take this from the Muslim law you will have to permit cousins and other near relations to be outside the prohibited degrees. There is no doubt about it. Be prepared for it. You will have to march near it. You cannot keep away from it.

Now that you are asking me to come in, that I should have this *dharmic* marriage, the implication would be that these prohibited degrees would be there. While there is freedom for me to marry such relations as I have described, this would create a ban on me. And it would not be only for the future. There have been so many such marriages and all of them would be invalid. Though you have provided in clause 21 that I can get my marriage, my *dharmic* marriage, registered as civil marriage, but think of the instances and their number. We shall have to run to the courts or to the Registrar to get them validated. Do you want me, an old man, to get my marriage registered now ?

Dr. Ambedkar : Do you want to marry again ?

Mr. Speaker : Order, order.

Sardar Hukam Singh : This Code would create a doubt because the girl that I might have married might, according to you, be within the prohibited degrees. What would happen then ? I enquire from the Hon. Minister what would happen to that marriage.

Shri Tyagi : And to your children also.

Sardar Hukam Singh : Yes, certainly. They will be "illegitimate" unless I get my marriage registered as a civil marriage now, at this age ! And the Hon. Minister wants all those persons now, at this advanced age, to run to the Registrar and get their marriages registered as civil marriages.

Shri Tyagi : As he has done himself !

Sardar Hukam Singh : Then again there is a marriage that is usually known amongst the agriculturists of my part as *karewa* marriage or widow's marriage. No distinction is made in the present Code as regards that. What will happen to that marriage, because we will have either the sacramental or *dharmic* marriage or the civil marriage— nothing beside it. The simple manner in which the *karewa* marriage is performed might look peculiar to some hon. Members here. There is no ceremony : it is a secular institution altogether.

The man and the would be wife sit together, a *chaddar* is spread over them and sweets are distributed and they become husband and wife. I do not think, Sir, the Hon. Minister can point out to me any provision by which such marriages would be recognized. He is making this Code more cumbersome. . . .

Pandit Thakurdas Bhargava : If it is a bigamous marriage then difficulty will arise.

Sardar Hukam Singh : May I enquire with your permission from my hon. Friend what form of marriage would that be. Would that be a *Dharmic* marriage without any ceremony. (*Interruption*) I do not agree with him and that would not be a *dharmic* marriage. Anyhow, I do not want to enter into a controversy here.

I come to my next point, that is, adoption. What I am going to say might look somewhat surprising to some of my hon. Friends and in this respect also I claim that we are much in advance of the rest of the country, so far as this adoption is concerned.

Dr. Ambedkar : You are always in advance of everybody.

Sardar Hukam Singh : I will tell you just now and then you would agree with me that we are much in advance on that subject too. As has been just pointed by my hon. Friend, Pandit Thakurdas Bhargava, it is the customary appointment of a heir. It has nothing to do with religion. There is no horror of incest. We are not eager to create sons to offer us *pindas*.

Shri Hussain Iman (Bihar) **:** Are there *Pindas* ?

Mr. Speaker : Let him proceed further.

Sardar Hukam Singh : We do want that we might have a heir to succeed to the property.

Dr. Ambedkar : Why do not you allow the property to go to the State ?

Sardar Hukam Singh : Then it might go to the Hon. Minister and that we do not want to do. Therefore, this is a most secular institution. There are no restrictions as to the age, caste or any ceremonies. A simple declaration is there and perhaps it was observed, last time too I made a remark that a man can adopt another older than himself. The adopter might adopt a man of his father's age. There is no harm in that ; he might be married and he might have several children. This institution you would not find anywhere. I fail to understand, Sir, if all these usages and customs are effaced, what is going to happen to these institutions, to these customs that we love very much, these traditions to which we have been accustomed for so many centuries.

Then, Sir, I would cite another peculiar instance, which might interest some of my hon. Friends and I invite the attention of the Hon. Minister particularly to this point.

Mr. Speaker : The hon. Member may proceed with his speech.

Sardar Hukam Singh : I wanted the Hon. Minister to pay attention to a subject which is very interesting.

Mr. Speaker : Order, order.

Dr. Ambedkar : I have been asked to introduce the Gandharva marriage. It was that which I was discussing.

Sardar Hukam Singh : I have no objection if our Chief Whip wants it. Then, Sir, I was submitting another interesting thing about adoption which the other parts of the country perhaps do not know altogether. I know of instances where girls have been adopted. They have been made heir to the property and they have succeeded. Custom has allowed them and recognized them. I humbly request you Sir, to say whether with the introduction of this Code, all these traditions, all these customs and usages are going to be thrown away to the winds. Is the society that has been built going to chaos now ? I believe that the laws should reflect the stage of advancement of society, the progress that it has made, not that a target be fixed and then the society be pulled up to reach that target. It was tried in Turkey but it failed there also. I request this Government to go slow. There must be cases on the extremes on both sides and I believe there are hardships now in certain cases, but you cannot avoid this. There would be such cases even if this Code is passed. I again stress that 'adoption' is a very old institution which is so dear to us and we cannot afford to lose it even though this Code may be passed.

Then the third thing to which we have serious objection is about inheritance. As I observed a few minutes ago I am not opposed to give a share to the girls. I rather believe that this discrimination is only on account of the sex, that she should not get an equal share. It was remarked that it is not only on sex, but I think it is only on sex that she is not being given an equal share with her brother. Otherwise, there is no reason if they are off-springs of the same parents. I ask, why she should not have an equal share. I say on that ground alone, she must have an equal share. My objection is not on that account. What I submitted last time as well—perhaps it was on the 14th December 1949—that I would prefer that she should have an equal share in her parent's property so long as she is unmarried and she should have an equal share with her husband as soon as she is married, in her father-in-law's property. She must have a share. This should not disturb the present society and structure. We have pecular circumstances. I believe this Code would not apply to lands but certain. . . . . .

Pandit M. B. Bhargava (Ajmer) : It will now. The official amendment is there.

Sardar Hukam Sing : Sir, Punjab is a State of small holdings. Already they are uneconomic. Another thing is that we have smaller number of females than males in the Punjab.

Dr. Ambedkar : Therefore, their value is great.

Sardar Hukam Singh : Yes, Sir; you are going to increase their value but not to look to other things. That value can be, I should say, adjusted. As I said the number is already fewer. It is well-known that some time back people did not like that they should have sons-in-law and there were female infanticides. I tell you honestly and not as an argument that you would encourage that again, if you give a share, because that land-holder feels that he has already got an uneconomic holding, a pair of bullocks and a cow. It is not possible for him to part with those animals which are so essential for his cultivation. It is no answer to say that if a father had another son, how could he have dealt with him, he must have got a share. We are insisting that there should be a definite list of prohibited degrees, and we want to give the daughter in marriage outside that list. That is to say, a stranger would be brought in. He would not live there; he cannot associate himself with the environments. What he would do is to part with his share as soon as he marries the daughter. There are dissensions in every village; there are parties in every village. The friends would not buy the property; but the share would be sold to the enemy. This would create quarrels, murders and affrays.

Shri Tyagi : He is right.

Sardar Hukam Singh : I pray, kindly, do not bring this into the Punjab. Otherwise, you would create confusion and disorder there.

Shri Syamnandan Sahaya (Bihar) : What fault have the other provinces done ? Why not plead for them also ?

Mr. Speaker : Order, order; let us proceed.

Sardar Hukam Singh : I thought that if I advocated their cause, somebody might question my authority and representative character. Therefore, I confine myself to my own province, and particularly my own community. Otherwise, just as I said at the beginning, I wanted that I should represent the whole of my province; I feared that I might be questioned.

I was submitting that that would create confusion and disorder and the whole society would be upset. That is not what is intended by this Code. That would not be progress; that would not be advancement, but would be rather a retrograde step. Therefore, so far as we are concerned, do not pull us back. Let us go on. You should consider us to be in the vanguard and follow us as we go further. That would be better perhaps for us, for the whole country and for all concerned.

There is another thing that I wanted to submit.

Shrimati Durgabai (Madras) **:** Sir, may I ask a question ?

Mr. Speaker : It would be better that the hon. Member is allowed to go on without these arguments and counter arguments, if we really want to progress with the matter. All that I would earnestly appeal to all the Members is to be very attentive to the arguments advanced instead of putting questions at each stage. It is better that hon. Members hear all what a gentleman has to say and then advance their arguments. I am going to give full chance to all people who want to speak.

Shrimati Durgabai : I am just asking a question, Sir,....

Mr. Speaker : Whatever that may be, let us allow the members to have their say. Otherwise, there are these interferences, these attempts to draw replies—I am noticing it, there are constant interferences notwithstanding my appeals not to interrupt—with the result that not only is the link of the speaker's argument broken, but more time is taken, and I do feel that even the seriousness of the debate is being lost. We are here legislating on very vital matters. Let us, therefore, seriously and anxiously hear whatever every member has to say, instead of passing remarks or putting questions, just by way of explanation or drawing explanation on particular words. Let us be patient with the speaker.

Sardar Hukam Singh : Then, Sir, I come to my last point, and that is rather painful. I want to bring it to the notice of the House that the Sikhs have already certain apprehensions; some might say that they are unfounded. Whatever it may be, we have this apprehension that there is an attempt to absorb the Sikhs and efface their traditions and culture. . . .

Several, Hon. Members : No. no

Sardar Hukam Singh : . . .usage and custom. They have certain grounds. They have always complained that they have not been fairly treated. One instance that they have cited is that while it was being

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announced that they are an integral part of the Hindus, when the President had to make an order about Scheduled Castes they were kept at a respectable distance. Under a recent Order of the President 34 castes have been declared as Scheduled castes provided they profess the Hindu religion. Only four castes, and that at the expense of all the safeguards that we wanted were allowed to be classed as Scheduled castes if they profess the Hindu or the Sikh religion. We have that complaint that whenever there is a chance to confer some benefit, then, we are not included or brought near and we are kept at a distance. But when there is nothing to be given, but only these usages and customs and traditions are to be effaced, we are offered an embrace, an empty embrace that might, rather, I should say, not be pleasant to us, because we love these customs and these traditions. We have adhered to them for a very long time. Therefore, I pray in all earnestness that we might be excluded from the sphere of this Bill.

Pandit Thakur Das Bhargava : With your permission, Sir, I want to put a question, in respect of the last point of my hon. Friend. Is it not a fact that the Sikhs themselves came to Sardar Patel and agreed that only these four castes should be included among the Scheduled Castes and no others ? If that is true, if that is according to agreement, my hon. Friend is not entitled to raise this grievance here.

Sardar Hukam Singh : It is a long subject. The Revered Sardar himself put in these words that these four castes could only be acknowledged, if the Sikhs gave up all the safeguards that they wanted. It was at the sacrifice of those things that these four castes were acknowledged, and they too only in two provinces, the Punjab and the PEPSU. They are not Scheduled Castes in other provinces.

Pandit Thakur Das Bhargava : That is according to the agreement.

Sardar Hukam Singh : No.

Mr. Speaker : Dr. Ambedkar.

Shri T. N. Singh (Uttar Pradesh) **:** Is Hon. Minister's speech going to be in reply ?

Several Hon. Members : No, no.

***Dr. Ambedkar :** Sir, I propose first to deal with my own amendment before I deal with the other amendments that have been tabled to this clause.

* P.D., Vol. VIII, Part II, 6th February 1951, pp. 2462-73.

It will be seen that in the amendment which I have moved there are three specific points. The first point is that I propose to omit the word professing which occurs in sub-clause (1). The reason for omitting this word is that it has been felt that probably today as the Hindu society is composed, there are people who are Hindus, but who do not profess the Hindu religion in the theological sense in which the word 'profess' is used. In former times one could give the illustration of the Brahmo Samajists in Calcutta or the Prarthana Samajists in Bombay, two sects which were formed from out of the Hindu community, which openly declared that they did not profess the Hindu religion. As my friend Pandit Thakur Das Bhargava observed in the course of his speech there are many Hindus to-day who, so far as religion is concerned, prefer to adopt an eclectic attitude. They like to have something from some religion which appeals to them, and to that extent they are prepared to abandon the religion of their ancestors. If, therefore, the word "profess". remained in this context, it would be open for anybody to argue that unless it was proved that a particular individual was a professing Hindu this Code would not apply to him. That certainly is not the intention of the Code. The intention of the Code is that it should apply to every person who belongs to the Hindu faith. I prefer the use of that terminology and it is therefore, to do away with any such ground for an objection founded upon the word "profession" that I propose to delete it.

My second amendment relates to clause (d). Clause (d) as it stands, says that this Code shall apply to a convert to the Hindu religion. Now, as the house knows, we are using the words "Hindu religion" in a very broad sense; not in the limited sense in which it would apply to a person who believed in the *Vedas,* who believed in the infallibility of the *Vedas,* who believed probably in the *Chaturavarnas,* and who also believed in the performance and the sanctity of the *yagnas* as a means of salvation. We are using the word in a large sense, to include also Buddhists, Jains, Sikhs etc. who do not believe in these dogmas. Consequently, if clause (d) remained that the convert who is referred to in sub-clause (d) is the convert only to the Hindu religion in the limited sense of the word. In order to do away with that contention. I propose to use the new phraseelogy—"convert to the Hindu religion, Buddhist……." and so on and so forth.

My third amendment deals with the deletion of sub-clause (4). As the House will realise, this sub-clause (4) did not exist in the original

Bill as it was placed before the House at the time of the first reading. This clause was introduced in the course of the proceedings of the Select Committee. The idea of those who sponsored sub-clause (4) was this. It was their view that since the intention of the Code was to bring all Hindus under all denominations under the purview of this Code, there was no purpose in setting apart those Hindus who had already performed their marriages under the Special Marriage Act of 1872. It was for that reason to make the Bill all inclusive, that this sub-clause (4) was brought in. I have however found that there is one point which was, I am sure, not present to the mind of the Select Committee when they introduced this clause. It is quite obvious that if sub-clause (4) remained and it applied to persons who were married under the Special Marriage Act of 1872, they would, in the matter of succession and inheritance be governed by the present provisions contained in this particular Code. Now, anyone who is aware of the provisions contained in the Succession Act with regard to inheritance and the provisions contained in this Bill will have no doubt that so far as women are concerned, the provisions of the Succession Act are far more liberal than the provisions contained in the present Code. It does not, therefore, seem right that people who have already married under a particular law and have on that account, become entitled to the more liberal provisions contained in the Succession Act should be dragged down and brought under the present Code which as I said, contains provisions relating to inheritance which are somewhat illiberal as compared with the other provisions. It is for that reason that I propose that sub-clause (4) should be omitted.

Now, Sir, I will turn to the points made by the critics of clause (2). Examining the amendments that have been tabled, I do not find any difference between myself and my friend Pandit Thakur Das Bhargava. His amendments is, more or less, the same as those contained in clause 2. I will presently explain why I have in my draft, named certain communities which he thinks is unnecessary. With regard to the other amendments, one can see that there are really three points which the amendments seek to make. One is this that there is no necessity for a Hindu Code at all. What is necessary is a Civil Code applicable to all citizens. That is one point, of view which is adumbrated in the amendments. The second is that this very Code which is placed before the House and which, according to its terms, is intended to be confined to the Hindu community should be made applicable to non-Hindus, such

as Muslims, Parsis, Jews, Christians and so on. That is to say, it should itself be regarded as a Civil Code, and the third suggestion is that the application of the Code should be voluntary. It should be a matter of choice either for any particular citizen or any particular member of the Hindu society to go before a magistrate and to register his will that he would like to be governed by this particular Code. In no other circumstances should this Code be made applicable in this country. And I believe there is one suggestion—I forget now the author of that suggestion—that this Bill should not come into operation except on a referendum to be taken after the elections or something like that.

Pandit M. B. Bhargava : That comes up later.

Dr. Ambedkar : Somebody said that, I cannot recall who.

Shri J. R. Kapoor : He intends to say so later on.

Dr. Ambedkar : Yes.

Now, I must say that I am very very much surprised to see some of those who until yesterday were the greatest opponents of this Code and the greatest champions of the archaic Hindu Law as it exists to day should come forward and say that they are now prepared for an All-India Civil Code. There is a proverb that a leopard does not change its spots and I cannot believe that those leopards which have been pouncing upon this Bill every time I came before this House have now suddenly so reformed their mentality as to become revolutionary enough to accept a new Code altogether. If they want a Civil Code, do they think that it will take very long to have a Civil Code ? Probably the underlying motive why they have made this suggestion is this. As it has taken four or five years to draft the Hindu Code they will probably take ten years to draft a Civil Code. I would like to tell them that the Civil Code is there. If they want it it can be placed before the House within two days. If they are ready and willing to swallow it, we can pass it in this House in half an hour.

What is the Civil Code ?—let me ask. The Indian Succession Act is a Civil Code. Unfortunately it does not apply to Hindus. I do not know if there is any person with the greatest amount of legal ingenuity who can devise a better Civil Code than the Indian Succession Act. All that would be necessary to make the Indian Succession Act universal and civil, that is to say, applicable to all citizens, would be to add a clause that the words contained in clause 2 of the Act, namely that it shall not apply to Hindus, be deleted and then you

can have a Civil Code tomorrow. If you want the marriage law as part of your Civil Code there again the text is ready. The Special Marriage Act is there. All that you have to do is to remove the words that it shall not apply to this or that it shall only apply to that. All that you have to say in clause 2 is that it shall apply to all citizens and there is an end of the matter. I want to know whether those who have made this suggestion have done it with a serious intention and pious purpose of really having a good law on these matters. . .

Shri Sondhi (Punjab) **:** Take them at their word.

Dr. Ambedkar : I am not prepared to do it, because I know them very well. That is the reason why yesterday I did not accept the suggestion of my friend Mr. Rohini Kumar Chaudhary. He said, "Adopt whatever measures and either take the Code through or if you cannot take it through, keep it to the end." I could have accepted the word and the suggestion of my friend Mr. Rohini Kumar Chaudhary if I could believe and trust him or that he will not have any opposition if I adopted the course that he suggested. I now find that he has been completely isolated. Some of his friends who were walking with him and forming a solid front, I find have now fallen away. They have seen light and they are prepared to support the measure in some parts, if not on the whole. Therefore, this idea of having a Civil Code just does not appeal to me, because I do not think there is either much firmness behind it or, I was almost going to say, seriousness behind it.

With regard to the plea that this Code should be applied to all citizens, I think my friend Pandit Thakur Dass Bhargava has replied to the critics who have made this suggestion and I do not think I can improve upon what he has said. I do not know that those who made this suggestion could be regarded as so ignorant—I was almost going to say so foolish—as not to realise the sentiments of different communities in this country ? It is all very good to say that we have proposed in our Constitution a Secular State. I have no idea whether any Members, when they use these words "Secular State" really mean what the Constitution is intended to mean. It does not mean that we can abolish religion : it does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognises. We are not here to fluot the sentiments of the people.

Babu Ramnarayan Singh : You are doing it.

Dr. Ambedkar : I am not doing it at all, as I will show you. Therefore, it seems to me that it is a suggestion which really lacks even commonsense and I do not therefore propose to deal with it.

Now in regard to the other question that the Code should be made voluntarily applicable. I think this is a very dangerous suggestion. What does this suggestion mean ? It means that this Parliament is only a body to recommend a certain thing. All that the Parliament can do, if we accept the suggestion is to say to the people outside. " This is a law we have passed. We think it is good. Gentlemen, it is for you to say whether you will accept it or not." If that is the position that we are going to adopt and if we accept this principle now, we shall be setting a precedent and there will be no end to such recommendations that may be made by Parliament, namely that much of its legislation should be left to be passed by people outside on a referendum. I do want to say that this Parliment is a Sovereign Parliament. Beyond seeking the mandate of the people it has no obligation to the people to obtain their consent. It can decide what it likes. It is supreme : It has authority to make a law, to unmake a law. If every time this Parliament is to be subjected to the vote of the ignorant people outside who do not know the A.B.C. of the technicalities of the law, this Parliament will have to be suspended : it would be much better not to have a Parliament at all.

Secondly, I have not seen any single example in the history of the Legislative Assembly of this country of such a course being recommended to Parliament. This is not the first time that Parliament is passing a law dealing with Hindu Law. I have made a modest computation of the laws passed by the Indian Legislature ever since legislative power began to be exercised, practically from 1833. Altogether 29 laws have been passed, some of them of a very drastic character making fundamental changes, but there never was any plea in this House that any of those laws should be left to be passed and sanctioned by public opinion or public referendum. (*An hon.* Member : They were not elected legislatures). It is worse still. Even when the legislatures were not elected legislatures, they exercised the lawmaking power and imposed it upon the people. Now when the legislature is far more representative than it ever was a plea is made that this Parliament cannot make a law for the people.

An Hon. Member : Nobody has said that.

Dr. Ambedkar : That is what some hon. Members suggested when they said there should be a referendum.

Now, I will go back to some of the comments which were made on the draft of clause 2. These comments were made particularly by my friend, Mr. Naziruddin Ahmad, and my friend Pandit Thakur Das Bhargava. Yesterday you were not in the Chair, Sir, but . . .

Prof. Ranga (Madras)**:** But the Chair was there.

Dr. Ambedkar : The Chair was there. What I wanted to say was that Mr. Naziruddin Ahmad started in a very accusing mood. He tried to prejudice the House against me by saying that the language of my amendments was mandatory : "*substitute* this." He thought that the more polite way of putting down amendments was to say, such-and-such words shall be substituted for such-and-such words". Really speaking, I need not have taken this point seriously because drafting is not my business—drafting is the business of another body of people who have their set rules of drafting and I could have very easily said that I am not responsible for it. But I did make enquiry into the matter whether the draftsman in using the language which he has used bad really fallen from grace or from the usual standard. The facts are these. For instance, the formula suggested by Mr. Naziruddin Ahmad that is, "such-and-such a word shall be substituted", I found is generally used when you draft an Act. There seems to be a distinction between the language adopted in drafting an Act and the language to be adopted in drafting an amendment. Therefore, as the draftsman was drafting the amendments he did not use the usual formula which I said is used in drafting an Act. The second thing is this. As the House will remember, the President has issued certain orders under the Constitution which he is entitled to issue. In that series of orders—I think it is a very fat book which some of my hon. Friends must have seen—the language that is used is the language which the draftsman has used in these amendments. He says, "I have followed the precedent which has been adopted by the President, in making these amendments". I went further and enquired, "Why did the President depart from the usual practice"? And the answer given was that the orders were so bulky that it was necessary to economise in printing paper and ink. Therefore, the draftsman who helped the President in framing his orders followed this particular way of putting these amendments. My draftsman, therefore, has really committed no error, no fault, in following the percedent adopted in the Constitutional orders. I, therefore, submit

that my learned friend's attempt to depict me in rather unsavoury colours has fallen to the ground. I will not deal with that further.

Now, my friend's objection was to sub-clause (d). He said that I am hoping in the convert to Hinduism. His point, if I understood it correctly, was that I have made no provision either here in clause 2 or in any other part of this Bill to have the rights of the convert in the family in which he was born. I must say that my friend, Mr. Naziruddin Ahmad who legitimately claims a very extensive knowledge of law should have forgotten that there is a very old Act called the Disabilities Removal Act of 1850 which was passed just for this very purpose namely, to remove any disability from a person who wants to change his religon in order to safeguard what is called liberty of conscience. It was an Act which was passed on the agitation of the missionaries in this country who found that the Hindu were not prepared to change their religion because under the ancient Hindu Law a man who went out of the Hindu fold was a *pant—a patit* could not inherit property. In order to do away with that rule of Hindu Law this particular Act was passed and I have done nothing to abrogate the provisions of the Act. If my friend had refered to the Schedule which deals with the Acts which are repealed by this Code he would have found that the Caste Disabilities Removal Act is not included in that Schedule. Therefore, the convert will retain all the rights of inheritance in his father's family if he wants to change his religion. And therefore Mr. Naziruddin Ahmad's complaint is absolutely groundless.

My friend said he had an objection to sub-clause (2). Sub-clause (2) says—

> " This Code also applies to any other person who is not a Muslim. Christian, Parsi or Jew by religion".

Obviously this sub-clause (2) is what I call a residuary clause, a clause which refers to the balance of people who are not included either among Hindus who are specifically mentioned or the Parsis, the Jews, the Christians, or the Muslims. There can be no doubt about it that there are in this country a vast number of people who do not follow any of these recognised religions, so to say. What are we going to do about it ? Certainly this Bill either should say that it does not apply to them or it should say that it does apply to them. And if it said that it does spply to them, it should say to what extent it applies to them. Everybody knows that there are in this country a vast number of people such as, for instance, the Adi Dravidas, the tribal people,

the jungle tribes, the backward classes, the animists, and so on and so on—one can go on enumerating *ad infinitum*. What about them ? Surely some provision must be made for them. Sub-clause (2) therefore applies to this class of people whom I called a residuary class. Now, it might be said that in making this Bill the Government has a political motive, namely, to absorb these non-descript people into the Hindu community so to say, by a side door. That is not our purpose at all, because you will see from the proviso what we are doing. The Hindu Code will apply to them only if it is proved that Hindu customs and Hindu usages are prevalent in that class; otherwise, they are free to do whatever they like. There, again, the criticism of my friend was quite misplaced.

4 P.M.

Prof. Ranga : Can they opt themselves out ?

Dr. Ambedkar : Once they have adopted the customs and so on, they are in; otherwise they are out.

Now, Sir, I will deal with certain points that were raised by my friend Pandit Thakur Das Bhargava and by Sardar Hukam Singh. Sardar Hukam singh's amendment is that it should not apply to the Sikhs. Later on, I suppose, he moderated his attitude and said that he had only objection to some parts. With regard to the question whether this Bill should apply to persons or communities other than Hindus in the strict sense of the word, I think it is desirable to have some general idea about the matter. The first thing that I would like to emphasize and which I would like Members of Parliament to bear in mind is this, that from a sociological point of view the variety of religions that we have in India or elsewhere seems to me to fall into two categories. There are religions which have as their part a legal system, which you cannot sever from those religions. There are religions which have no legal system at all, which are just pure matters of creed. The peculiarity about the Hindu religion, as I understand it, is this, that it is the one religion which has got a legal framework integrally associated with it. Now, it is very necessary to bear this thing in mind, because if one has a proper understanding of this, it would not be difficult to understand why Sikhs are brought under the Hindu religion, why Buddhists are brought under the Hindu religion and why Jains are brought under the Hindu religion. When the Buddha differed from the *Vedic Brahmins,* his difference was limited to matters of creed. The Buddha did not propound a separate legal system for his own followers; he left the legal system as it was. It may be that the legal system that then prevailed was a good system; that it had

no blemishes and no faults. So, he did not direct his attention to making any changes in the legal system in consequence of the changes that he introduced in certain religious notions.

[MR. DEPUTY-SPEAKER *in the Chair*.]

In the same way, when Mahavir founded his own religion he did not create a new legal system for the Jains. He allowed the legal system to continue and I think Sardar Hukam Singh will correct me if I am wrong when I say that none of the ten Gurus ever created a law book as such for the Sikhs. The trouble is—you may call it trouble; you may call it good fortune; you may call it misfortune; I am not particular about words—the fact is this. In this country, although religions have changed, the law has remained one. That is why the Sikh follows the law.

Sardar Hukam Singh : But now you are making a new law.

Dr. Ambedkar : It is a new thing now. The Jains come and ask, "What are you going to do to us ? Are you going to make us Hindus ?" The Sikhs say the same thing. The Buddhists say the same thing. My answer to that is this : I cannot help it. You have been following a single law system and it is too late now for anyone to say that he shall reject this legal system wholesale and will have nothing to do with it. That cannot be done. Therefore, the application of the Hindu Law and the Hindu Code to Buddhists, Jains and Sikhs is a historical development to which you and I cannot now give any answer. All that we can do is to say that the thing has gone wrong and change it, reform it or make it more equitable and this is what we are doing. So far as the Sikhs are concerned, I find from the judgments of the Privy Council that this question was debated much earlier than even 1830, when the decision was taken that the Sikhs were Hindus so far as law is concerned. Just count from 1830 to 1950—for how many years you have been regarded as Hindus for legal purposes !

Sardar Hukam Singh: It has not been doubted.

Dr. Ambedkar : In law, we have a principle which is called *stare decisis*—a decision taken a long time ago and on which people have gone had better be stayed although it is wrong.

Sardar Hukam Singh : You are going to change it now. What should I do ?

Dr. Ambedkar : Now, Sir, with regard to the points made by my friend Pandit Thakur Das Bhargava. I was really very happy to hear his speech.

Shri J. R. Kapoor : No praise will bring him into your parlour.

Dr. Ambedkar : I have used no temptations. I now find that really he has been digging various trenches one after the other. He knows very well and I see from the last trench that he knows very well that he would not be able to defend the first trench or the second trench or the third trench. He has got a very small last trench which, of course, is concerned with ousting the married daughter and I think that if that point could be conceded his opposition would be extinguished completely.

He has raised other questions also with regard to customary law. I agree and I have examined this position with great care. The Punjab Law does show that certain matters relating to personal law shall be decided by customary law, but I also know and I think my friend Thakur Das Bhargava also knows that the customary law is Hindu Law really. I do not think that that proposition can be denied, namely, that what is called customary law in Punjab is Hindu Law. The reason why it was not called Hindu Law was because the same customary law prevailed among the Muslims, and the East India Company was frightened about using the words "Hindu Law" when the law was also applicable to the Musalmans. But these are merely differences of words. It cannot be said that Punjab is not governed by Hindu Law : Punjab is governed by Hindu Law.

Now his great point was that I was laying an axe on their customary laws in the province. Well, as I listened to some of the instances which both my friends Pandit Thakur Das Bhargava and Sardar Hukam Singh gave, I found that these customary laws were really not appealable in any sense. I would merely call their marriage laws marriage made easy, their divorce laws divorce made easy and their inheritance law inheritance made easy. There is nothing fundamentally different about it. Therefore, I am not going to discuss the question on this occasion,— what extent the customary law should be saved ; to what extent the Punjab should be excluded. But I want to make this statement that I should never agree to exempt any province from the operation of this law. Let there be no doubt about it at all that the Hindu Code shall be a uniform code throughout India. Either I will have that Bill in that form, or not have it at all.

With regard to the second point as to saving customary law, I think that is a point that he could raise on the various clauses of the Bill where he wants to introduce the customary law, and if he proves that the deletion of the customary law is going to introduce any kind

of hardship I shall certainly consider the matter with great sympathy. I want to make this Hindu Code as easy as I can possibly make it.

Shri Tyagi : As marriage in Punjab !

Dr. Ambedkar : Easy in the sense that I do not want any kind of hostility, or hostile camp against the Hindu Code standing out.

If my hon. friend sees clause 4 he will find that it does not altogether oust custom. Therefore, when any particular clause comes up for consideration, if my hon. friend considers that the existing custom in the Punjab should be saved from the operation of that particular clause and if he can make out a case for exemption, I have no doubt that the matter will be sympathetically considered. I do not intend to give a more detailed reply to that because I think it is quite outside the scope of this particular clause.

***Shri R. K. Chaudhuri :** *rose*—

Shri Raj Bahadur : May I know how many more members are there to speak on amendments.

Dr. Ambedkar : I suggest that this clause be disposed of today. We have spent two days on it and there has been more than enough debate on it.

Shri R. K. Chaudhuri : Sir, I claim the credit of being isolated in the matter of this legislation.

Shri Syamnandan Sahaya : The hon. Member can come to the front bench and speak.

Shri R. K. Chaudhuri : Will you let me sit there tomorrow during the question hour ?

I confess that in this House I am isolated. But I hope the Hon. the Law Minister will have the courtesy to admit—which is a fact—that he is completely isolated outside this House. I do not regret the position in which I am placed, because I find that hon. Members of this House are afraid of speaking out the truth of telling the hon. lady Members of this House what they ought to be told that they are proving themselves far too aggressive. This, I respectfully submit, is not a matter to be laughed over. Hon. Members of this House would have noticed the way in which my revered friend Babu Ramnarayan Singh was squeezed out of his seat yesterday. It is only on account of the relenting heart of a certain lady Member that my hon. Friend has found his way to his seat.

* P.D., Vol. VIII, Part II. 6th February 1951, pp. 2473-83.

Sir, I warn this House against this aggressive character of our women. I think it is time that we speak out. I want to ask the Hon. Minister for whom he is legislating this Hindu Code and who wanted him to push on and proceed with it against the wishes of a large section of Hindu Society. Is it not because the hon. Lady Members of this House have egged him on to do it ?

I should, however, like to tell the Hon. Minister that he is not alone in that predicament. This House will recollect what our respected friend Acharya Kripalani said at the time we were considering the Report of the Select Committee, about the attitude adopted by one of his colleagues in this House and his companion in this world. He said that he was making bold to speak because his 'colleague' had gone abroad and when she returned she might ask for an account of the finances of the household, but also his conduct during her absence.

That shows, Sir, where we stand today. It is on account of this that you are prepared to brush aside the sentiments of the less forward Hindu women, who do not know how to dress themselves properly. It is the women who do not have recourse to gaudy and gorgeous *sarees,* women who do not know how to paint themselves—it is that section of the Hindu women whom you are trying to suppress in the way you are doing today.

An Hon. Member : Is all this in clause 2 ?

Shri R. K. Chaudhuri : I want to make it perfectly clear that I oppose all the amendments, including that of my hon. Friend Dr. Ambedkar, except the one which has been put forward by my hon. Friend Mr. Jaspat Roy Kapoor. I support that amendment because it practically tantamounts to an opposition to the Hindu Code. I will explain how it is an opposition to the Hindu Code. It gives us the fullest discretion to make this Hindu Code a dead letter, because according to this amendment the Hindu Code will only govern those people who would come forward in the open and make a declaration and say that they want this Hindu Code to be applied to them.

Shri J. R. Kapoor : I am tempted to exclaim ' Save me from my supporters'!

Shri R. K. Chaudhuri : I may tell my hon. Friend Mr. Kapoor that he may leave aside the *kambli* but the *kambli* would not leave him. To the end of this debate on the Hindu Code I shall follow him wherever he goes. If my hon. Friend Mr. Kapoor's amendment is carried, it practically means that we shall be in the position that we

are today, This Hindu Code will be more or less a Special Hindu Marriage Code. It will be something like that. Even now a Hindu can marry within a prohibited degree if he makes a declaration as is required under the Civil Marriages Act. Similarly, if this Hindu Code would only govern those who would make a declaration that they want to be governed by it, I believe that two-thirds—not two-thirds but nearly cent per cent—of the Hindus would refuse to come forward and make declaration in the manner which has been suggested by my Friend Mr. Kapoor. That will mean practically that this Code will be shelved and the Hindu Law which governs us today will continue to govern us.

I was very much interested to bear about this Punjab Customary Laws Act. This Punjab Customary Laws Act, as was admitted by my hon. friend Pandit Thakur Das Bhargava who referred to it in this House, did not prohibit bigamy at all. What my hon. Friend Pandit Thakur Das Bhargava wants is that the Punjab should be absolutely left out of this Hindu Code, that this Hindu Code may be in force in the rest of India but not in the Punjab—which means that although bigamy may be an offence in India, it will not be an offence in the Punjab and my hon. friend may go on merrily as he likes. I do not understand this, and I hope my Hon. Friend Dr. Ambedkar will be able to explain the position to us. It is this. When custom has got the force of law and that custom becomes invariable, no legislation can really over-ride it. Ordinarily if you are going to prove a custom, the burden is on you to prove that the custom is invariable, that the custom is not immoral, and that the custom has been followed. But when that custom is embodied in a piece of legislation which has been in force for some time and when that custom has not been abrogated, has been recognized. I do not understand how the application of the provisions of this Code can in any way interfere with that customary law unless it is stated clearly that all that law has been repealed by this Code. I may not have thoroughly studied the Hindu Code, but my impression is that no such provision has been made in this Code to repeal the Customary Law Act of the Punjab. And if that stands unrepealed you shall have inconsistent legislation in this country. Hindus in the whole of India will be governed by the Hindu Code, but those in the province of Punjab, where customary laws have been codified and are in force, will remain unaffected by this Code. I will ask the hon. lady Members of this House whether they are prepared

to allow Hindus of the Punjab to 'commit' bigamous marriages whether they are agreed at any rate that there shall be no divorce in the Punjab and that they would allow their sisters in the Punjab to be "persecuted"—it is their language, not mine. I say no woman can be persecuted. The days of persecution of the woman have gone. Nowadays it is the men who are being persecuted by the tyranny of women. If any hon. Member of this House had the temerity to express himself clearly, he would say something about the tyranny of modern women.

Therefore, I would ask this House to consider and pause carefully before it gives its assessment to this piece of legislation. Hon. Members of this House will remember that the Members of this House had no mandate to support such a sweeping legislation, a legislation having such far-reaching effects. Our election had taken place in an indirect way. I repeat what my hon. friend Mr. Naziruddin Ahmed said. It is not that we are not competent to pass this legislation. We are competent to pass any legislation today. We are competent to pass a legislation that the rule which is now obtaining—the salutary rule which has been accepted by the Government of India—that no married women should be taken in the Indian Foreign Service should be abrogated, and we can pass a legislation to say that none but women shall be taken therein. We are perfectly competent to do that. There is no question of incompetency here. Women can become constables and carry sticks ; they can put on pyjamas and turbans ; they can even wear beards ! also as Members of the Constabulary. Why can we not pass a legislation like this ? Nothing stands in the way of our doing this.

Mr. Deputy Speaker : How do all these arise under this ?

Shri R. K. Chaudhuri : I was only giving an analogy. Then I come to the most important thing. As we had no opportunity of getting a mandate from our electorate and as we have been ignoring the majority opinion given or received as a result of circulation of this Bill, we must take very great care to consider how far this legislation will be accepted by us. I therefore agree with my hon. friend, Mr. Naziruddin Ahmad that the consent of the people is necessary for passing this legislation. Now, speaking about discrimination, a great deal was said yesterday about the discriminatory character of this piece of legislation and about the way in which the Constitution has been ridden rough-shod. Dr. Ambedkar, if I remember a right, himself

referred to the question of breach of certain fundamental rights of the Constitution. He said if the present Hindu law is not amended, in the manner in which he seeks to amend this code, then a question may arise in the Supreme Court or in the High Court where it will be asked by the other parties that the Hindu law makes a discrimination between Sudras and non-Sudras. A Sudra of any age can be adopted. A sudra can be adopted even though he may be related very closely and then a Brahmin of a similar position cannot be adopted. Therefore there is discrimination in the present Hindu law and therefore he said that unless the present Hindu Code is adopted the present Hindu law will always be subjected to criticism by a court of law on the ground that it is discriminatory.

Now, Sir I come to a more serious point. I suggest that the arguments which have been put forth by me hon. friends. Messrs. Jhunjhunwala and Naziruddin Ahmad should also be taken into serious consideration. I also want to draw the attention of the House to one particular point, namely the discriminatory character of this legislation which hurts the Constitution itself. My hon. friend Mr. Naziruddin Ahmad and I are behaving as if we are sailing in the same boat. He is isolated in one bench here and I am isolated in another. My hon. friend, Mr. Naziruddin Ahmad—God forbid—if he were to take another wife, if he wants to marry again during the life-time of his present spouse, then he will not be liable to conviction either under the Indian Penal Code or under the Hindu Code, whereas I being a Member of the same House, being a close neighbour of his, if I dared to follow his example and if I have in undergo another ceremony of marriage, what will be my fate ? I shall be simply prosecuted, convicted, sentenced to imprisonment and probably man-handled when I am taken to prison by my own friends. There will be a great public feeling against you that I was spared in any way. Is this not discrimination ? If that is not discrimination, I fall to understand the meaning of the word 'discrimination'. We are subjects of the same sovereign power; we are bound by the same Constitution ; we are living in the same realm and while the one enjoys the privilege of marrying as many as four times. I cannot dare to marry more than once. What is then the meaning of discrimination ?

Shri Tyagi : Bad luck.

Shri Raj Bahadur : On a point of information, may I know how many times has the hon. Member married already.

Shri R. K. Chaudhuri : That is a personal question. Examples are very contagious. My hon. friend Mr. Tyagi says that it was my

bad luck that I have been put in such a discriminating position. Let us take it arithmetically ; if after having married once, I am called 'unlucky' then what are you to call a gentleman who has not been able to marry so long. Yesterday my hon. friend Mr. Naziruddin Ahmad mentioned about a certain kind of help which some of my esteemed friends would give in the way of vote by quoting Hindu Shastras. He being a non-Hindu probably was feeling delicate and refrained from saying what he wanted to say. Let me make myself clear. I submit that the first premises on which those who want to support this Hindu Code is this : Hindu religion is intimately connected with Hindu law, that is to say the Hindu law is intimately connected with Hindu religion. Divorce of Hindu law from Hindu religion means nothing. Here this is a religious question. If the Hon. Minister in charge of the Home Ministry were to take out a census of those people who believe that not to have a son is to go to Hell, you will find that two thirds of the Hindus believe in that. They believe that if you do not have a son, you will go to hell.

Shri Tyagi : I want to know how can one help it if he has not got a son. What is he to do ? It is not in his hands.

Shri R. K. Chaudhuri : You need not go into irrelevant questions. I would just like to tell my hon. friend that there is no limit of age so far as marriage is concerned. Dr. Ambedkar has been merciful in this respect. He has said do not marry more than once. You may divorce a dozen of your wives and there is no bar to your marrying again.

Shri Tyagi : One by one.

Shri R. K. Chaudhuri : Only one at a time ; not more than one. That is what is stated here. He does not lay down any restrictions of age. A woman of 85 years under this new picture of the Hindu Code can marry a young man of 25. There is no civic sense in this Hindu Code.

Shri Deshbandhu Gupta (Delhi) **:** What about *vice versa ?*

Shri R. K. Chaudhuri : *Vice versa* also. I submit that it is most inhuman for the author of this Hindu Code to suggest that you can, whatever your age, marry again if you are inclined to marry.

Shri Bharati L. Krishnaswami (Madras) **:** What is the relevance of this to clause 2 ?

Shri Deputy Speaker : He says that the Hindu Code Bill ought not to be applied to all persons except to those who voluntarily submit themselves to the Code. Therefore, he is developing that argument.

Shri R. K. Chaudhuri : Coming to the clause under discussion personally, I would prefer that the provision should remain unchanged, so far as professing the religion is concerned. My hon. friend Dr. Ambedkar and a few others have sought to amend the provision by saying that this Code shall apply to Hindus by religion. It is very difficult for anybody to prove that he is by religion a Hindu. What does the word 'religion' indicate. The word 'religion' is derived from *religio,* to bind. Can I say that I am a Hindu by religion ? I may say that I am born of Hindu parents, that I am a son of a Hindu and therefore I am a Hindu. It would be difficult to say that I am a Hindu by religion. The Hindu religion lays down a very high standard. Judged by those standards, it will be found that most of the people who call themselves Hindus are not really Hindus. I may profess myself to be a Hindu : I may like to be governed by the Hindu law or Hindu Code ; but I cannot call myself to be a Hindu by religion. I do not follow the principles of that religion at all. How can I say that I am a Hindu by religion ? A Hindu is not expected to take meat. According to the Hindu religion, it is a forbidden thing. There may be many in this house, who may be calling themselves Hindus, but who would not be a Hindu according to those standards. Many who may call themselves Hindus may be doing un-Hindu acts. But, still, they would like to be governed by the Hindu Code. To say that this Code shall only apply to those who follow the principles of the Hindu religion would be a misnomer and is certainly opposed to all principles of honesty. I say that although I may not be a Hindu, although I may not be a follower of the Hindu religion, I profess Hinduism ; I say that I am a Hindu. So long as I say that I am a Hindu, the Hindu Law or the Hindu Code may be applicable to me. So long as I do not renounce my religion, so long as I say that I am a Hindu, because I call myself a Hindu, I shall be governed by the Hindu Law. Or as my hon. friend Mr. Jaspat Roy Kapoor contemplates, so long as a man says that he will be governed by the Hindu Code, he shall be governed by the Hindu Code ; not otherwise. Therefore, I say, how can you lay down this condition that one must be a Hindu by religion ?

In our part of the country, that is in Assam, the tribal people have been held to be governed by the Hindu Law. They are not Hindus. They are not Hindus by religion. They do not follow the principles laid down in Hinduism for marriage. They do not observe the same kind of the prohibitive degree of Hindu marriage. They do not follow

the same rules of adoption. All the same they are governed by Hindu Law, because in some cases they have no other law, and in other cases they profess to be Hindus. Therefore, if it comes to a question between the phrases "professing the Hindu religion" and "Hindu by religion" I will prefer the former.

And now, let me come to another aspect of the matter. There is this question of converts, and Dr. Ambedkar has himself brought forward an amendment in this respect. But I maintain that so far as Hinduism is concerned, this word "convert" is not applicable. I can understand reconversion to Hinduism, though I do not know much about it, there is no conversion to Hinduism because Hinduism is not a proselytising religion. To speak of a convert to Hinduism is absolutely meaningless. There cannot be any conversion to Hinduism. Anyone living in Hinduism is a Hindu, unless he clearly says that he is not a Hindu, that he is a Muslim, or a Parsi, or a Christian or Jew. That has been the position from time immemorial. There cannot be a convert to Hinduism. Will Dr. Ambedkar kindly tell me what are the ceremonies to be performed for a conversion to Hinduism ?

Dr. Ambedkar : *Prayaschitham*.

Shri R. K. Chaudhuri : Can anyone be converted into a Hindu ? Did Dr. Annie Besant convert herself to Hinduism ? Can Dr. Ambedkar give any example of a conversion to Hinduism ?

Dr. Ambedkar : There are so many decided cases on the subject and if my friend will only refer to the first few pages of Mulla's Hindu Law he would get all the information that he wants.

Shri R. K. Chaudhuri : If Dr. Ambedkar is referring to "Sudhi" that is a different thing. It relates to a Hindu who has left Hinduism and is again brought into the Hindu fold. But what is the procedure or the ceremony for converting any one into a Hindu ? If it is a case of conversion, I know the process. The person concerned must fast for a certain period.

Mr. Deputy Speaker : Is the hon. Member trying to fix the procedure for reconversions of Hindus, in this Code ?

Shri R. K. Chaudhuri : I am only saying that there can be re-conversions into Hinduism, but there cannot be a conversion. Do not use the word "convert" here. Use some other word.

Mr. Deputy Speaker : Courts have decided that there can be a convert to Hinduism even though he did not belong to the Hindu fold originally.

Shri R. K. Chaudhuri : There can be re-conversion, but what about conversion ? The difference is only with respect to that.

Shri Venkataraman (Madras) **:** The Madras High Court in the case of Ratansi Morarji-*vs*-the Administrator General, has decided that any person can be converted to Hinduism.

Dr. Ambedkar : It related to an English woman and the question was whether a Christian could be converted into a Hindu and the answer was, yes.

Shri R. K. Chaudhuri : Will the Hon. Minister tell me the procedure or the ceremony for such a conversion ? It is never too late to learn, after all.

Mr. Deputy Speaker : The hon. Member himself is very particular that Hindu traditions etc. should be preserved. Where is the harm in getting as many Hindus as possible and as many people as possible under the Hindu Law ?

Shri R. K. Chaudhuri : I only want that the author of this Bill, Dr. Ambedkar and the founder of our Constitution should not indulge in words which have no meaning. The word "convert" has no meaning when applied to a Hindu.

Dr. Ambedkar : That is an old anti-quated view of Mr. Chaudhuri.

Shri R. K. Chaudhuri : Can Dr. Ambedkar please refer me to one single original text of Hindu law where it is said that conversion to Hinduism is possible ?

Dr. Ambedkar : I can refer the hon. Member to the case of Morarji-*vs* the Administrator General.

The Minister of State for Transport and Railways (Shri Santhanam) : And there is a monument in Bhilsa which speaks of a Greek having been converted into a Hindu.

Dr. Tek Chand (Punjab) **:** And many born Christians and Moslems have become Hindus. If my hon. friend wants he can bring any such persons now and they will be converted by Aryas to Hinduism and absorbed in Hindu Society. I have several books giving cases of conversions even during Moslem rule and he can have them and read them at his leisure.

Dr. Ambedkar : Oh do not do that, Mr. Chaudhuri never reads.

Shri R. K. Chaudhuri : I am afraid the hon. Members confusing between conversion and re-conversion and also between conversion and initiation. Anyone can be initiated into Hinduism. I am not speaking about that.

Mr. Deputy Speaker : But he says there can be conversion also.

Shri R. K. Chaudhuri : Let us abandon that point now Sir.

Mr. Deputy Speaker : I thought the hon. Member has concluded ?

Shri R. K. Chaudhuri : Practically it is a conclusion for me, for I am going away to-morrow.

Mr. Deputy Speaker : Will a few more minutes do ?

Shri R. K. Chaudhuri : No. Sir, a few more minutes will not suffice.

Mr. Deputy Speaker : Then we may adjourn.

The House then adjourned till a Quarter to Eleven of the Clock on Wednesday the 7th February 1951

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*HINDU CODE—*Contd.*

Mr. Speaker : The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 is under discussion.

Shri Gautam (Uttar Pradesh) **:** Before proceeding further, I would request you , Sir, to clarify one point. I understand—I was not present yesterday in the afternoon ; therefore I am raising this question—that one of the speakers used some language while discussing this clause which is objected to by some Members. Has the attention of the hon. Speaker been drawn to it ? I would request you, Sir, to issue certain instructions so far as these things are concerned so that Members may be within their bounds and may not hurt the feelings of other Members.

Shri M. A. Ayyangar (Madras) **:** May I say, Sir, what happened ?

Mr. Speaker : He need not repeat those things.

Shri M. A. Ayyangar (Madras) **:** No; I am not going to repeat those statements at all, because that would defeat the very purpose. Yesterday, unfortunately, some remarks, I think, quite unwittingly, escaped the mouth of one of the hon. Members who was speaking. No doubt, he always speaks in good humour and nothing is taken exception to. Unfortunately, it descended to something which was not desirable. As soon as it was pointed out to me, as I was in the Chair, I directed that that portion of the statement ought to be expunged from the records. I thought the matter was over. I think all are agreed, and the hon. Member also expressed regret for having made that statement quite unwittingly, that that chapter is closed. It does not form part of the record. I do not think there is any need to bring up the matter again to you for any particular action.

Mr. Speaker : I would only say that I trust that members will take sufficient note of this and so deliver their speeches and pass remarks that there many be no occasion again to repeat this kind of thing.

Shri Frank Anthony (Madhya pradesh) **:** A bad example is set by the Treasury Benches.

Mr. Speaker : Let us now proceed further with the Bill.

Shri B. Das (Orissa) **:** Sir, I see the debate on clause 2 has descended to the level of a general debate on the whole Bill. I think today is the last date fixed by you for passing this Hindu Code.....

Several Hon. Members : No, no.

Mr. Speaker : Order, order. Does the hon. Member want to put any time-limit ?

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* P.D. Vol. VIII, Part II, 7th February 1951, pp. 2486-2537.

Several Hon. Members: No no.

Shri B. Das: I want that on clause 2 there should be a closure.....

Several Hon. Members: No no.

Mr. Speaker: Order, order, hon. Members need not say yes or no. Let there be a motion for closure and if it is the general feeling that there has been sufficient discussion, I will accept closure. But, even if I accept it, the matter rests with the House ; they may acceptor reject the closure motion. As regards the character of the debate, though I do feel that we are going into very general remarks, yet, I myself do not know how the discussion could be restricted, particularly in view of the nature of clause 2. Some communities are sought to be included ; some are sought to be excluded. There are amendments on both sides. Therefore, a general survey to justify the inclusion or exclusion of the provisions becomes to some extent at least necessary. That is why I was feeling difficulty in restricting debate on that point. However, I believe there are no points or explanations to be asked. Let us proceed immediately with the consideration of the Bill.

***Shri Syamnandan Sahaya** (Bihar) **:** The debate has now gone on for full two days. If the speeches made in this House are any indication of the reception that the Code is going to have in the country, even an optimist and ardent supporter of the Code like the Hon. Dr. Ambedkar should have no difficulty in arriving at the correct conclusion.

Shri B. K. P. Sinha (Bihar) **:** May I point out, Sir, that the supporters of the Bill have not spoken so far.

Shri Syamnandan Sahaya: It is no fault of the House, or even of those who do not agree with this Code if the supporters of the Bill do not like to rise and support their cause. How are we to know how many of them in their own hearts support and outwardly do not propose to do so ?

Shrimati Renuka Ray (West Bengal) **:** Take the vote and see.

Shri Raj Bahadur (Rajasthan) **:** If I understood correctly, Sir, you are at present calling those hon. Members who have moved amendments.

Mr. Speaker: Anybody, who wishes to support or oppose the Bill is welcome to do so.

Shri Syamanandan Sahaya: Sir, this bill has been, in various stages, before the country for, if I may say so, quite a long time,

* P.D., Vol. VIII, Part II, 7th February 1951, pp. 2488-99.

and opinions either in favour or against the Bill have been expressed both in the Press and on public platforms and even in this House on many occasions. I have no doubt in my mind that if the opinions are scrutinised very well, they will disclose not merely an opposition to the provisions of the Code

Shri Sonavane (Bombay) **:** On A point of order, Sir. We are now dealing with clause 2 relating to "Application of the Code". The discussion should be on scope of clause 2 and not a general discussion. Is the hon. Member allowed to have a general discussion on the Code as such ?

Shri Syamnandan Sahaya : May I, Sir, with your permission, say.....

Mr. Speaker : There is no point of order. I just explained a few minutes ago that when you are discussing the "Application of the Code", when you want to include certain communities or exclude certain communities, it becomes perfectly competent and relevant to show how the various provisions adversely affect or benefit the communities. That is why I said it is very difficult to restrict the whole discussion at this stage to specifically certain portions of the Bill. For example, I believe, yesterday, Sardar Hukam Singh, went into the question of marriages and went into the question of succession. It could not be excluded as irrelevant discussion because it is sought to enact that this Bill should apply to Sikhs also. He is perfectly entitled to show how this Bill adversely affected the Sikhs in the matter of marriages or customs or succession. That is how the points are interconnected. Therefore, it will be better if such points are not raised over and over again.

Shri Sonavane: But, Sir.....

Mr. Speaker : Order, order.

Shri Syamnandan Sahaya: As I was saying, if the opinions so far expressed—they are quite voluminous—and are in the possession of the Hon. Law Member himself—are carefully scrutinised, they would not merely disclose the opposition to the various provisions of this Code, but would also disclose an anguish, a feeling of anxiety, and a feeling of great concern, among the Hindu community over this Code. I know and I fully realise the sincerity of purpose of those who want to lead the community on a different channel. This is nothing new in history. Every reformer, perhaps, would not have been a reformer, if he had not thought that what he himself thought of religion was the right thing and that every other thing, as was said here by

the Mover, was archaic. Therefore, although I may congratulate the Hon. Law Minister for evolving a new religion which it is left to posterity to adopt or not to adopt, so far as present conditions are concerned, I must certainly warn him and Government that it would be a suicidal policy to make it an obligatory legislation.

The Minister of Law (Dr. Ambedkar) : We are prepared to commit suicide.

Shri Syamnandan Sahaya : This reform can only be considered either as a social reform or a religious reform. If it is a social reform, I don't see why the Hon. The Law Minister entered a caveat yesterday when some hon. Member suggested that it should be made all pervading. In that connection he urged that we ought to have consideration and regard for the sentiments and feelings of non-Hindus in this country. I am really surprised that while he advocated that for the non-Hindus, he does not seem at present to have any regard for the feelings of Hindus in this matter. Speaker after speaker in this House, coming from different parts of the country, belonging to certain different sects or certain sections of the Hindu community, have explained how they feel about the application of the provisions of this Code to them. Therefore, while this reform may, in the opinion of some, be called for, and urgently called for, yet, I do submit that it will not be fair to make it an obligatory legislation. I have, therefore, great pleasure in according my support to the amendment of Shri Jaspat Roy Kapoor who suggests that it should be left open to members of the Hindu community, or for the matter of that of any other community, to accept this Code and register their will to be governed by it. If on the other hand it is held that it is some type of a religious legislation, then I think Dr. Ambedkar will concede that this is neither the appropriate time nor even proper for a secular State to attempt some kind of a religious legislation. I consider that this reform is of a social nature. And from time of which we have any record, we have known that these social reforms have to be of a permissive nature so that people may be able to adopt them with pleasure. In civilised life, even conversion by force is not permissible, and I am sure Dr. Ambedkar will not make any attempt at forcible conversion to the religion which he propagates now through this Hindu Code.

When the Minister of Law started his speech yesterday—he will Pardon my saying so—I think he was a little nervous about his case, because normally he is not opt to go about hitting right and left. He has given this House the very good example of

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very sound arguments at all time, some of them most difficult, both here and in the Constituent Assembly. But yesterday, he started his speech hitting right and left and calling those who had moved amendments and made speeches in support of them as being absurd and if I remember right, as being foolish and……

Pandit M. B. Bhargava (Ajmer) **:** And devoid of commonsense.

Shri Syamnandan Sahaya : Yes, and devoid of commonsense. Well, though I did not like it, and though it hurt me, still as one who does not agree with him in getting this Hindu Code passed as it is, I felt a little happy that the author of the Bill was so nervous that he was not stable at all.

Shri J. R. Kapoor (Uttar Pradesh) **:** When the case is poor, abuse the adversary.

Mr. Speaker : Order, order.

Shri Syamnandan Sahaya : Now, it we scrutinise the provisions of the law carefully, we will find that there are really some tremendous difficulties which the mere passing of this Code is not likely to solve.

[MR. DEPUTY-SPEAKER in the Chair.]

After all, a social reform has to keep not merely, the individual but the whole society in view. And if certain provisions of this Code are given effect to, without any consideration to the particular manner in which society has been running for a long time, it will end in breaking up society as it is today. Therefore, I submit that it is necessary that this Code, if passed at all, should be permissive so that people who would like to be governed by it may do so with their eyes wide open.

Let us also see, what was the original intention of those who decided to have a Hindu Code. I will refer you, Sir, and the House to an important recommendation of the Hindu Law Committee popularly called as the Rau Committee. At page 13 of their report in paragraph 50, they say :

> "Most of the provisions in the Code are of a permissive or enabling nature, and impose no sort of compulsion or obligation whatever on the orthodox. Their only effect is to give a growing body of Hindus, men and women, the liberty to live the lives which they wish to lead without in anyway affecting or infringing the similar liberty of those who prefer to adhere to the old ways".

This recommendation, I submit, is very clear and it was made after the Committee had toured round the whole country and ascertained the views of the Hindu community. This recommendation must have

been made in all seriousness and I submit there is no reason for us now to depart from this very important decision of the Committee, whose recommendations are the basis of the Code which we are considering today. I do not know whether the mass of evidence collected by this Committee has been carefully gone into and if it is so done. I have no doubt in my mind that the Government of India will come to a similar decision with regard to the applicability of this measure.

Some friends yesterday made a suggestion about taking a referendum on this very important issue. Here again we find the Hon. Law Minister wholly opposed to it and not only that but the climax was reached when he said that the electorate are ignorant and they are people who do not know anything about this matter

Shri Bharati (Madras)**:** About the technicalities of the matter.

Shri Syamnandan Sahaya: You heard his speech and so did I. The records are here. It is not a question of technicality at all. Every member of the Hindu community in this country knows fully what he wants so far as his religious and social laws are concerned and there will be no difficulty, in my opinion, in taking a referendum on a question like this. When I recalled that he who was the main architect of the Constitution of India and he who was an ardent advocate of adult franchise should now speak so disparagingly about democratic methods, it was not only a surprise but a shock to me and I thought within myself whether what the Hon. Law Minister himself said yesterday about the leopard not changing spots was as true today as when it was said. We cannot forget that wherever or whenever democracy is inaugurated they do not start it with the entire electorate being as educated as one would like them to be. Let us not forget that deomcracy is its own teacher and the more you consult your electorate the more you give them the chance to express their opinion, the more conscious and the more educated you make them. I therefore submit for the consideration of the Law Minister that there cannot be a more approriate method of consulting the electorate today than a referendum on the Hindu Code. After all whether the electorate today is politically conscious to that extent or not, it certainly will have to be admitted that so far as religious sentiments and feelings and religious laws are concerned they are fully conscious and if you ask any man in the streets of a town or village, he will be able to tell you what is good for him. I therefore submit that even now there is a chance and opportunity and the Law Minister will do well to consult the electorate on a matter like this.

An Hon. Member : He is his own electorate !

Shri Syamnandan Sahaya : But if he chooses not to do so as it appears, then I will submit to him to make the law a permissive legislation. If he makes the law an obligatory legislation—I do not know for what he will take my warning worth—but let me tell him that he will fail in his attempt as did the Slave Kings of yore—the Lodis, the Tughlaks, the Khiljis, the Sayyids and the Moguls—who attempted in vain to eradicate the old religion and the old religious laws, which he called archaic yesterday. I have no doubt that his attempt at ending what he called archaic laws will fail in the same manner as did the attempts of others similarly placed in authority for thousands of years. There is something more than mere laws in the Hindu system of Social Codes. Its foundations have been much more deeply laid and could not be shaken by legislations passed in such haste without consulting the people affected.

When listening to the speech of the Hon. Law Minister I was reminded of a story which for a long time was published by the *Amrita Bazar Patrika* year after year on a particular day. The story was about an old Pandit and Pandits are proverbially poor. His wife pestered him from time to time about finance for running the household. The Pandit was able to fork out a rupee or two now and then to enable the household to be carried on. One fine morning he struck upon something very novel and told his wife, "You need not worry about funds any more. I have found out a device by which I can get a lakh of rupees." The wife asked him what was the device. He said "I have composed a few couplets last night and I shall go to the Raja tomorrow morning and place before him the couplets. I will tell him that if he could find any Pandit in his *Durbar* who will be able to interpret the couplets then I would pay him a lakh of rupees. If, on the other hand, no one can interpret my couplets the Raja would have to pay me a lakh of rupees." The wife laughed and said "You must be a fool. Supposing some one interpreted the couplets, where are you going to get the one lakh from to pay to the Raja ?" The Pandit in his turn laughed and said "You ladies have no imagination. You people never had any since creation……."

An Hon. Member : Is it your opinion ?

Shri Syamnandan Sahaya : Not mine, it is the Pandit's opinion. I cannot speak so disparagingly of women. Continuing, the Pandit said" It is very simple." She asked what was it and the Pandit said

"I shall accept no interpretation. The Pandits will come and go and I shall accept nobody's interpretation. I will say that is not the interpretation and ultimately the Raja will have to fork out the one lakh of rupees." Even so whatever advice or suggestion or opinion we may express here., if the Hon. Law Minister is in the mood of the Pandit what can we do ? We have to appeal to him and tell him what is the opinion outside. I have no doubt that he will depend upon us for giving him such information as we are capable of gathering by going round our constituencies…

Dr. Ambedkar : I have more information than you have.

Shri Syamnandan Sahaya : You may have more than what I personally have but I am talking of the Members of the House and I am not talking of myself only. I dare not say that I have more information than you have…….

An Hon. Member : What about the lakh of rupees ?

Shri Syamnandan Sahaya : The Pandit got the lakh of rupees all right.

Pandit Thakur Das Bhargava (Punjab) **:** Has the Hon. Minister not admitted before in this House that public opinion does not favour this Bill ?

Shri Syamnandan Sahaya : Has he ? I am very glad. That very strongly supports my case. If that is so, then there is no ground for the Hon. Minister to come to this House at all with this Code. In any case the difficulty arises when you come into power : then, naturally apart from power, one has also the feeling that one has the knowledge, the information, which no one else possesses. Mr. Gladstone was once rebuked by Queen Victoria by remarking, "You must know, Mr. Prime Minister, that I am the Queen, the Sovereign of England" And Gladstone hit back by saying. "Yes, Your Majesty, but I am the people of England". So, you Mr. Law Minister may be today the Sovereign of India., we are the People of India, and if you don't listen to us you will go the way the sovereigns have gone. Whether you like it or you don't, this is what will happen.

This matter of the Hindu Code, in my opinion, should not be taken—pardon my saying so—as it is being taken. Religious reforms and social reforms are certainly necessary. No one could possibly get up in this House and say, "No, we shall stay where we are". What are we then asking you to do ? We are only asking that the legislation be made permissive. Let the people know all about it. Let them think

over the matter and having considered the whole matter if they think it is for the betterment of the country, for the betterment of the society, they will accept it. But do not for God's sake make it obligatory.

Shri R. Velayudhan (Travancore-Cochin) **:** Then what is the meaning of a legislation ? Why have it ?

Shri Syamnandan Sahaya : I will explain to you presently what is the meaning of legislation. You are perhaps fresh to a legislature. Otherwise you would not have asked that question. Anyway I will reply to you in a few minutes.

Shri R. Velayudhan : I have read the Hindu Code.

Shri Syamnandan Sahaya : You have read the Hindu Code. That is good enough. Then you will go to heaven straight.

If you look at the legislation and the different parts of it, you will find that on various details certain exceptions have been made in the Code itself. Now, the Code excludes in certain respects the two communities following *Marumakkattayam and Aliyasantana* laws. And yesterday the Hon. Law Minister said that he was omitting sub-clause (4) to allow some type of married men to be governed by the Succession Act, that is those who were married under the Special Marriages Act.

Mr. Deputy Speaker : He said it was more liberal.

Shri Syamnandan Sahaya : Well, if it is more liberal for them I do not see why the more liberal law should not be good for everybody. He is codifying the Hindu Law—not laying down any new but bringing up-to-date in certain respects the existing laws and bringing in some reforms. If you want you can be more liberal—who prevents you ? But after all, if you claim that one of the main purposes of this Act in the first place is to codify the Hindu Law, keeping in view the different rulings and different interpretations and making the best use of them and also introducing progressive reforms—if that is so then I don't see why you should have one set of succession laws for one class of married Hindus and another set for another class. If you want to do it, do it. There is no use saying that such of our friends here who advocate the passing of a Civil Code do not really want it. Pardon me for saying so, but let me assure the Hon. Law Minister that it is not so. The feeling is that if you want to put the whole country on a certain basis even if it meant some sacrifice, do so and we will gladly accept it. But you pick and choose and single out one community who perhaps would not be prepared to fight with you on that issue.

If you pick out that community and do what you like with it, and the rest say, "Don't touch our religious susceptibilities", then that is where the real difficulty arises.

Then the Code already excludes customary laws which will operate in spite of the Hindu Code. Exclusion has also been permitted for those who were governed by separate customs although they may be belonging to the Hindu community : so that it will be found that these differences and these exclusions, these permissions to be able to be governed by another law are already found to the Code. I therefore submit that it is not really asking too much of the Hon. Law Minister and of this House to make this Code a permissive legislation.

There are other difficulties also which I would like to mention for the kind and sympathetic consideration of the Hon. Law Minister.

For instance, it is laid down mat all divorces henceforth will have to be registered. When I read this—not only this but other paragraphs and other sections of the Code—I felt like exclaiming that the Code was really a heaven for lawyers, and that if anyone was going to profit or benefit by this it would be the past colleagues in law courts of the Hon. Minister. You may pass this Code tomorrow. Supposing we all agree that we shall not discuss this legislation any more and we pass it tomorrow, even if we do so do we really and seriously think that the people living in the villages, whom the Hon. Law Minister refuses to consult by a referendum because they are ignorant, will from day after tomorrow start registering all their divorces and all their marriages?

Dr. Ambedkar : There is no provision for registering divorces.

Shri Syamnandan Sahaya : I am sorry if I take time but before the House rises I shall read out to the Hon. Minister this provision. I have already tabled an amendment on that clause.

Shri Bharati : Registration for marriages only. There is no registration for divorces. You make a mistake.

Mr. Deputy-Speaker : The hon. Member evidently means that there can be under the Code no divorce except by a decree of court.

Shri Syamnandan Sahaya : Yes. The hon. Member has again drawn a distinction between tweedledum and tweedledee though it was not expected that he of all persons would take recourse to these. Well, if it is not registration and if it is only through law courts, then it strengthens my argument all the more. Is it possible to imagine, when we have a vast majority of people—thirty-three crores—many

of them living in rural areas, not knowing anything about procedural laws and rules, is it possible to imagine each of them going to court for marriage and divorce ? I had thought it was only registration where the lawyers would get very little fee. But if it is the law courts then I have no doubt, and the house and the Hon. Law Minister will agree with me, that it is a heaven for the lawyers. In this vast country at least for some time to come—I should say for a long time to come, but certainly for some time to come—there is no justification for such an obligatory legislation to be passed. Give them the chance—if they think it is necessary then let them adopt it.

We have said a lot and the Code also claims for itself a very great and progressive position when you say we are giving this and we are giving that to the women of our country. I suppose that up to a certain point there is something to be said about it. But if we study the social conditions today among the Hindus, shall we not agree that these ladies in their households are almost each of them an Alexander unto herself ? You want to reduce that position of being the monarch of all they survey to that of a mere partner and you know what respect partners evoke, particularly when you are doing away with the joint family system. In a joint family system, the partners had a certain respect and position. There was inter-dependence and therefore one partner cared for the other partner. But having done away with the joint family system, you want to reduce the women to the position of a partner. If you are a partner, you have your set rights and your set quota. Today, the women are the masters of the whole household.

Dr. Ambedkar : Yes, very much.

Shri Syamnandan Sahaya : Tomorrow, you will make them partners.

An Hon. Member : Partners in what ?

Shri Syamnandan Sahaya : Partners in property.

An Hon. Member : Not in life ?

Shri Syamnandan Sahaya : I meant partners in property. After all, she gets something from her father's house. She is the owner of that. She feels she has got something by herself. Why should you not make her depend upon the newly acquired house of her husband ? You know, after all, properties create difficulties. I know of families, not one but many, where the power of attorney by the wife is not held by the husband but by some other person.

Dr. Ambedkar : There may be very good reason for it.

Shri Syamnandan Sahaya : That is what your Code will reduce the Hindu community to. If some people like it, then of course I have no objection to their adopting it.

Shri Raj Bahadur : Hence the necessity for divorce.

Shri Syamnandan Sahaya : I know young people like you are very anxious to have divorce laws, but there are other people who have to think of your welfare.

So, these are the difficulties about this legislation and before I resume my seat I would strongly urge upon this House and the Hon. the Law Minister to accept the amendment of making this legislation permissive. Otherwise, I am afraid it will not be taken so lightly by Hindus as Government think. It is going to create a great furor in the country.

Dr. Ambedkar : No.

Shri Himatsingka (West Bengal) **:** Dr. Ambedkar is not afraid.

Dr. Ambedkar : I don't think so at all.

Shri Syamnandan Sahaya : I have no doubt in my mind that the Hon. the Law Minister is not afraid. He need not be afraid either. I had attempted not to say this, but I am doing so now. When I was last in my constituency, some people came to me and said, "You have not been a Congressman before" I said, "Yes, I have not been a Congressman before." They said, "You also dine with Muslims and are not orthodox and you are not a very devout Hindu." I said, "Yes. I am not a very orthodox Hindu in that sense." And then they said, "Is it therefore that this Hindu Code has been invented which has the effect of a bullet that kills two birds at the same time, namely, the Hindu community and the Congress ? If the Congress Government is not circumspect and responsive to public opinion even after this, let them go the way they like. The country and the people will decide what to do with them."

***Shri Alagesan** (Madras) **:** Unfortunately yesterday the House was plunged into a mood which detracted very much from the seriousness of the measure that is before us. I am glad that we have now regained the proper mood to consider it more seriously than before. Yesterday, the Hon. the Law Minister put up a very vigorous plea for the acceptance of the Code and his amendments. He is always a superb advocate. Apart from the content of Iris speech, the tone and the manner of it brought even those who oppose him very near getting convinced.

* P.D., Vol. VIII, Part II, 7th February 1951, pp. 2499-2504.

Shri Venkataraman (Madras) **:** But you were not.

Shri C. Subramaniam (Madras) **:** That is why he said "very near".

Shri Alagesan : I would like to be completely convinced, but I am sorry to say that I am not convinced. I would still urge the Hon. the Law Minister to bring forward a common civil code, though he derided the idea and even went to the length of attributing motives to those who wanted such a thing. For instance, he asked : "How is it possible that those who oppose the Hindu Code tooth and nail would accept a common civil code ?" He questioned their motives. But I would respectfully ask him. "Why is it that they object to this Hindu Code ?" Is it not due to the fact—partly at least—that it does not apply to the entire nation ? It applies only to one community, however large a section it may be. Thus, this Code is only a sectional measure and it is not a common measure for all. Is not the opposition to it, at least partly, due to this fact it does not embrace the entire nation and the entire community ?

Again, he said that he would produce legislation tomorrow, as if anybody doubted his capacity to produce legislative texts. He threatened to bring the text of a common and universal code tomorrow and confront the House with considering it. But that is not the main thing about it. If he proposes to confront this House with a common civil code, then it has to be considered in all its aspects and bearings by one and all and he will be the first person to come forward with amendments to that code. He said yesterday that no legal ingenuity can improve upon the Indian Succession Act, but I am sure, the artist that he is, he will go on amending even the best piece of legislation. Even for this Hindu Code, we find that his amendments are larger in number than the amendments proposed by any other Member. He can amend, and amend because others want it and desire it.

Again, he went on to expatiate on the sovereign and supreme nature of this Parliament. Nobody ever questioned it, but the sovereignty and the supreme nature of this House need not have been affirmed at the cost of an insult to the master of this House. That was the unfortunate part of it. Though we are a sovereign body, we are subject to the people's will and our sanction is the people's will.

Babu Ramnarayan Singh (Bihar) **:** Hear, hear.

Dr. Ambedkar : Why don't you live in the village rather than live here ? You will be a better master there than you are here.

Shri Alagesan : I wish to put a counter question to the Hon. the Law Minister. He said that those who oppose the Hindu Code cannot agree to a common civil code. It is impossible, he said, because he knew those persons very well. Everybody knows that the new elections will be held all over the country for this Parliament as well as for the legislatures of the various States within a year's time. It is not necessary that because this House is sovereign and supreme it should take upon itself the task of legislating on each and every subject. It may postpone some legislation : it may leave, with profit, some legislation to the House that will be elected within a very short time, and I do not doubt that the Hon. the Law Minister will concede that the new House that is going to be elected will have more time and will certainly be better placed and will certainly reflect the latest opinion and mood and temper of the people than this House can ever do. Will he not concede that such a House will be better placed to enact this piece of legislation than this house is ? And if he does not choose to do it, if he does not choose to leave the matter in the hands of the House that is to come, is it due to the fact that he is afraid that this measure will not be passed by that House ? Shall I attribute such a motive to him, though I would not like to do it ? (*An Hon. Member :* You have done it.) Why then does he fight shy of placing this all-comprehensive codification of Hindu law, before the new Parliament of this country ? I think he should satisfactorily answer this question.

But the chief complaint against the present Government, if one can say so, is this. After we have succeeded in our revolution, we have failed more in the psychological sphere than in other spheres. We have failed to enthuse the people : we have failed to strike that emotional chord in the people which alone binds them to us. Everybody is worried on this account. Why ? It is good that we consider this question and examine it a little more carefully. In my opinion, we have decided largely on a policy of carry-over. We simply carry on the old traditions and we have not done anything to show a striking change which appeals to the people. This Hindu Code is an instance in point. It has been conceived under quite different circumstances, when we were under the impression that everything that is Hindu is wrong and cannot be correct. We wanted to reform, we wanted to change, but not with a proper appreciation, in my opinion. We are simply carrying that over. We are trying to model the Hindu Code as a code that will apply to the Hindu community, though it is a very great community

in this country, and not to all. It is because we have failed to introduce any innovation that we are in this mess. We have got everything that goes to make an emotional appeal to the people and yet we have strikingly failed in that field. That is something like a play with all the ace actors and yet the play fails to impress the audience. Our performance I shall liken to that.

What is the reaction that we have produced in the country by bringing forward this measure ? Supposing we had brought forward a common measure that would have applied to one and all. Then there would have been an electrical change in the atmosphere in the country ; there would have been an atmosphere of realism with regard to this measure. We would have been able to consider this measure more realistically than we are at present doing. And that we have failed to do. If we had done that we would have convinced the entire country that we are taking cudgels against and demolishing all differences based on caste and religion in the true spirit of our secular democracy. We would have incidentally translated our ideal of secular democracy into action and would have convinced everybody. Now there is not even a ripple on the surface except the placid placard holders outside this House and the imposing police cordon ; and perhaps occasional crowds in the galleries in multi-hued *saris*. We have not succeeded in producing any greater effect than this. But, I am sure that if the Hon. the Law Minister were to come forward with a common code that will embrace all communities, then the whole country will take interest in it and try to be more realistic about it. I may also venture to say that the reaction outside our country would also be much better, because at present we are held up to ridicule in the outside world by interested parties that we are a nation wedded to caste with the result that our prestige suffers. A common code would have done everything to dispel such a misunderstanding.

Again, there have already been instance where the Hindu law embraced other communities. I am told the Moplahs of Malabar, the Kutch Momins and the Khoja community, the followers of the Aga Khan, were all following the Hindu law and were governed by the Hindu law up till the year 1937 when the Shariat Act was passed. I am told that even the author of Pakistan was governed by the Hindu law. When such is the case why should you fight shy of bringing forward a common code which will embrace all Hindus, Muslims, Christians and so on ?

Yesterday, the Hon. the Law Minister was very pleased with the speech of my friend Pandit Thakur Das Bhargava. He was all praise for the Code. He showered encomium on the Hon. the Law Minister for having thought fit to bring forward this measure. But, he made one very important reservation. He said all this only on the condition that it should not apply to the Punjab. He made an observation that those who have moved amendments are trying to rope in the other communities, the non-Hindus in this Act, and he asked whether the non-Hindus in this House are prepared to come under this measure. He went on to answer the question himself in the negative. But, I have consulted some of the non-Hindu Members of this House and they are quite willing to have a common code.

Dr. Ambedkar : Non- Hindus ?

Shri Alagesan : Yes, non-Hindus.

Shri Bharati : May I have the names of those Members ?

Shri Alagesan : The hon. Member may have it later from me ?

As it is, we are doing a great injustice to the non-Hindu Members of this House. They are unable to take any interest in this discussion.

Dr. Ambedkar : Why, Mr. Nazruddin Ahmad has.

Shri Alagesan : He only reflects the opinion of his clients. The other non-Hindu Members of this House simply sit back and relax. They are not able to take any lively interest in the discussion, if they support it they are afraid of wounding the susceptibilities of the orthodox section of the Hindus: if they oppose it they are afraid of still more terrible elements. So thay are playing a passive role.

Prof. Ranga (Madras) **:** They support the Bill.

Shri Alagesan : That is doubtful. It is, therefore, necessary that we should make this measure more representative. Because, there will be nothing objectionable in it. If monogamy is good for a Hindu it ought to be equally good for a Muslim.

Shri Syamnandan Sahaya : Better for him.

Shri Alagesan : The present day Indian Muslim would not, I think, oppose it on religious grounds, because when Muslims were permitted to marry up to four wives perhaps it might have been on account of the expanding phase of the Arab Empire. They wanted to expand and conserve, and so they were permitted to marry up to four wives, perhaps. But now we are faced with an entirely different situation in this country. Though our Prime Minister likes and loves to play

with children and forget many of his worries, he is not prepared to greet their first arrival in this country. He has said so openly, and the prospect of more and more children certainly frightens him as well as it frightens everyone. It is a patent fact. I have no doubt our Muslim friends will realize it and try to fall in line, whatever their present religious law or practice may be. So it is not as if there are insurmountable barriers in the way of evolving a common civil code for this country.

I would like to quote the example of China. It is as ancient as our country. Apart from the ancient texts, they have recently evolved a civil law which embraces and tries to enact the three principles of the people enunciated by Dr. Sun Yat Sen. These principles, as the House knows, are nationalism, democracy and popular economic progress. We can very well follow the example of China, as we are placed in a similar situation, and try to put in our principles, the principles that the Father of the Nation placed before the country, and make them a reality. Nothing would have pleased him better than the bringing within the ambit of one civil code all the great religions that inhabit this country,

My hon. friend Pandit Thakur Das Bhargava waxed eloquent and welcomed most of the things that are found in the Code because he was sure that they would not apply to him. He welcomed all the salient features of the Code because he was sure that they would form the basis for the future civil code of this country, and he felt that this was a right step in that direction. But I am afraid I am unable to accept his plea. I am afraid it only side-tracks and postpones the question of evolving a civil code. Now that we have done our best by the Hindu community we would not bother about a common civil code, because the impression generally is—and I think there is good ground for it—that we are prepared to meddle with everything that is Hindu but we are fighting shy when it concerns others.]

Prof. Ranga : One by one.

Shri Alagesan : I only wish that the prophesy of the professor will come true, that you will approach others also and try to reform them also. But as it is, the impression is gaining ground—and that is the ruling impression—that we are prepared here to go only to the Hindu community and none else. And that in my opinion is the chief psychological barrier to the passing of this measure. I hope the Hon. Law Minister with all his ingenuity will devise something which will dispel this

misapprehension and try to convince not only the members of this House but also the people outside and then launch upon his offensive.

***Shri Biswanath Das** (Orissa)**:** Sir, I thank you very much for having given me a chance to have my say in the course of discussions over the Hindu Code Bill. I was really trying to play the role of a backbencher in regard to the discussions on this Bill. But certain views expressed by the Hon. Minister of Law have goaded me to speak and record my protest.

In the course of his speech—need I say very lucid and analytical, speech—he used certain choice expressions which are not only unwarranted but uncalled for. He has declined the demand for a referendum. I am not very much in favour of a referendum. I am not very much in favour of a referendum after all that has taken place. But to call it 'absurd' is as absurd as the absurdity itself. You are going to legislate on very important matters, namely, questions relating to marriage, divorce, adoption, joint family, women's property, succession, maintenance and the rest. The Hon. the Law Minister himself has recognized and admitted that the system of Hindu Law involves not only the legal frames of the society but also of our religious precepts would it be fair for him to take up the legislation of such important questions which concern the society, the life and living of crores of people of this country, without consulting the people themselves ? In the course of his speech he stated that he does not know of any country where a plebiscite is taken for legislation. Even in ordinary matters, such as nationalisation and the rest, important political parties have refused to undertake such responsibility in a democracy. They dissolve Parliament and go and take the mandate of the country on such important issues. I would ask the Hon. Minister whether the principles involved in the Bill are less important than those in England and elsewhere where Parliaments have been dissolved and a mandate of the people has been demanded and taken. Does it come well from him to say that these are not matters on which a popular mandate is necessary. Let me not think of a plebiscite or even a dissolution of Parliament or anything of the nature demanded by some of my friends though those are relevant, logical and constitutional. We are an indirectly elected Legislature. Parliament has to carry on business till the House is duly constituted. It is more or less in the nature of a caretaker Parliament I do not dispute the technical

*P.D., Vol. VIII, Part II, 7th February 1951, pp. 2504-17.

right of this House to pass any legislation. But constitutionally, it looks to me odd to say that on such an important legislation as this, we are to be refused to take the mandate of the people. Is it because he is well impressed of the fact that the people on consultation would not allow him to go on with the legislation ? Otherwise, where is the need on his insistence not to put off legislation which is hanging fire so long and also to insist upon one question, namely, that it shall be passed only in this House. I ask why in this House ? What sin has this Parliament committed ? Is it because it is an indirectly elected legislature ? I would tell him that he is as good a representative as myself. I am elected by the Provincial legislature of the State of Orissa and he is elected by the State Legislature of Bombay. I have a right to ask the Hon. Minister whether he has consulted his electorate and whether he has got the mandate of his electorate in this regard.

Dr. Ambedkar : I do not want a mandate.

Shri Biswanath Das : You do not want a mandate. That is the sort of responsibility you owe to your constituency and that is the sort of constitutional notion that you want to inculcate into the people of our country. I will only refer my hon. friend to the Preamble of the Constitution which this House has enacted and to which my hon. friend, the Minister of Law has made a very notable contribution.

The Preamble of the Constitution says : "……to constitute India into a Sovereign Democratic Republic and to secure to all its citizens : Justice, social, economic and political ;……." I want to ask him whether this is his sense of democracy to say "I refuse to consult the illiterate masses who have sent me here, who have given me the chance of representing the Province and which has given me the chance of assuming the reins of office as a Minister." Sir, all this is under the Constitution. We assure all its citizens social, economic and above all political justice. I would join issue with my hon. friend if he says that he has not assured political justice to the people of the country, because he refuses to consult them, the very electorate that have sent him here.

Dr. Ambedkar : Next time they won't elect me.

Shri Biswanath Das : It does not matter. You can stand by yourself. You do not need their vote and that is the reason why you find it an easy safety-valve.

Dr. Ambedkar : I care more for the Code than for my election.

Shri Biswanath Das : I am not thinking of my election. I am thinking of my responsibility as an elected Member of this Parliament.

Dr. Ambedkar : It is one o'clock. Have you concluded ?

Shri Biswanath Das : I will continue in the afternoon.

The House then adjourned for Lunch till Half Past Two of the Clock.

The House re-assembled after Launch at Half Past Two of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair*]

Shri Biswanath Das : Sir, in the course of my speech this morning, I was speaking how, in democratic countries, when important, legislations and questions have to be taken up and are being placed on the statute book, the party foresees the legislation, ...

Shri Ramraj Jajware (Bihar) **:** On a point of order, Sir. There is no Member on the Treasury Benches.

Mr. Deputy-Speaker : It is regrettable that there is nobody to represent Government. The Minister of Law has just come in.

Shri Biswanath Das : ... places its programme before the country in the form of a manifesto, then on the basis of that manifesto, elections take place, and the party gets a vote in favour of the principles for which it stands. I claim that nothing of that kind is possible in an indirectly elected legislature as the present Parliament is. None-the-less, we have an electorate. That electorate is an enlightened electorate. Neither the Hon. the Law Minister nor his friends in this House or outside this House could say that the electorate to which we have the honour to belong is not enlightened. They are no other than the Members of the State legislatures. I claim that Government and the Law Minister should have taken necessary steps in this regard to consult the State Legislative Assemblies on this important legislation by requesting them to have their say in the matter, which would have given an opportunity to the country to speak itself. At the same time, it would have made the passage of this legislation easy and convenient: easy because with the command given by our electorate, it would not have been possible for the hon. Members of this House to oppose this legislation without resigning their seats ; convenient because no one would have had the audacity to say, "I differ from this legislation and yet I continue to be a Member of the House". No one could have it both ways. No one could afford to be a Member of the House and refuse to carry out the mandate of the electorate. Therefore I claim -that the Hon. the Law Minister as also Government have failed in

this important respect, which was and is still open to them. I agree with the Hon. Law Minister, though differing from him that this legislation is urgent, and immediate to be passed in this Parliament.

By all means do not take recourse to a plebiscite ; but the time is still there to make a reference to the State legislatures. After all, we are not going to pass this Bill in this Budget session. I may, in this connection, state that I for myself doubt the sincerity of Government regarding the need for passage of this Bill.

Several Hon. Members : No, no.

Shri Biswanath Das : My hon. friends who are anxious may say, no, no. I have a right to put forward my point of view in presenting my case before the Members of Parliament. If they were really anxious, it would not have come before this House for discussion for three days. What is the meaning behind it ? I must frankly confess that I am unable to understand how in a legislation of this nature, in respect of which there are wide differences among us and protests all over the country, the Law Minister or the Cabinet expects that these could be solved and the Bill could be placed on the statute book within three days as my hon. friend Mr. B. Das was claiming. I refuse to live in a fool's paradise. A legislation of this nature, unless it is to be pursued through a party mandate, has to continue from day to day and each person being allowed to have his say in the matter and try to place his points, if possible, for the acceptance of the House. Under these circumstances, I very much doubt the wisdom of the Hon. Law Minister in allotting three days, and that in this Budget session when you have not only to pass the Railway Budget, and the General Budget, but have also forty or fifty important Bills that are pending. Government say that they are hard-pressed for money. The newspapers announce that fresh taxation is awaited. I do not know how far that is correct. If there is any speck of truth in that, I have a right to ask the hon. Members on the Treasury Benches as to what they have done regarding the passage of the Estate Duty Bill which is hanging fire for the last. one and a half years. I claim that first things should come first. What is the problem that you have solved up till now ? You have solved no problem ; but you have succeeded in creating problems. I believe, therefore, that Government, or at least the Law Minister is not anxious, nor is he very alert to see that this legislation is passed into law. If they were so, a special sitting, that was promised by the Leader of the House should have been conveyed, or a special session could be convened to discuss the Bill thoroughly and pass it into law.

Sir, you will pardon me if I say that the Hon. Law Minister would not have dealt with the House in the way he is proposing to do, hurling insults upon individual Members of the House if it were not for the declaration of the hon. the Leader of the House that he stands or falls with this Code.

Shri Syamnandan Sahaya : Forget that. That is not the position now.

Shri Biswanath Das : I am not speaking to the Members : I am speaking to you, Sir. I will be happy if the Members will leave me alone, though I very much like and appreciate their help.

Therefore, I claim that the Hon. Law Minister has not been fair to the hon. Members of this House.

Then, I come to the second assertion that he made and that is the declaration that there is lack of commonsense in those who demand a common code for India. Why ? I should have been glad to be favoured with reasons for an insult which I claim is not merited. He said not only that but he proceeded further and said that he could present a Civil Code in two days.

Dr. Ambedkar : Yes.

Shri Biswanath Das : Then by all means, let him do so. We have been waiting for it for the last so many months. If it is possible to let us have a common Civil Code in two days, by all means let us have it. Let him then favour us with it.

Dr. Ambedkar : That will do, Mr. Das. You will exhaust yourselves. Conserve your energy. You are not in best of health, I find.

Shri Biswanath Das : I take note of the advice tendered by my, hon. friend.

I do confess that the caste system will do no good to India, that the sooner it goes the better. I cannot think of a society living on the *Bhat Handi* system, on a system which says that if anyone touches my pot of *Bhat* or cooked rice, or my roti, caste is violated, because he does not belong to my caste. That is harmful. Let us do away with that system. The sooner we do that the better. At the same time, do I not realise that my ancestors, my forefathers have founded a system much nobler and much higher than the *Bhat Handi* system ?

चातुवर्ण्यं मया सृष्ट गुणकर्म स्वभावशः

I created the four Varnas (i.e., fourfold castes) according to the *Gunas* (i.e., qualities), *Karmas* (i.e., action) and the *svabhavas* (i.e., natures)

Have the frame-work on the lines laid down in the Gita—that will be acceptable to all. Instead, what does my hon. friend do ? Instead of taking me upwards he takes me downwards. I could agree to go with him upwards, but……

Shri J. R. Kapoor : To heaven and not to hell.

Shri Biswanath Das : To heaven or mid-heaven, but I refuse to go with him downwards.

Dr. Ambedkar : You do not know how to choose your friends.

Shri Biswanath Das : I am glad I have committed that blunder.

Well, a common Code is not unknown. In Portuguese India you have it to-day. There are Hindus living in Portuguese India. Why not have it in India which is far more advanced than Portuguese India ? And if it is so easy to have a common Civil Code as my hon. friend says it is, let him come forward with it, and he will find at least some of those who are now against him will be with him. But, in respect of this Hindu Code, we cannot and we will never agree to go along with him. You cannot touch Muslim society, because then it will be the cry of religion being in danger. You cannot touch Christian society, then also it will be a question of religion being in danger. But you can kick Hindu society and have your new experiments propagated in that society with ruthless uniformity. We cannot agree. Being a man of sixty, I cannot agree with my hon. friend in his constitution of a society based on rationalism. In our country there had been eternal strife between spiritualism and rationality, and in that fight it is spiritualism that has come out and rationalism has gone down, and the rationalists were branded *Nastikas* and the spiritualists as *Astikas*. I refuse to be *Nastik*. The form of society that the Hon. Minister proposes through his Hindu Code is nothing short of a society for which agitation was carried on in India in days of yore, and the country as a whole rejected it and the country today I make bold to say, will reject and is bound to reject it. If my hon. friend refuses to leave it for option, it is because of his apprehension that society will not go with him. If he is afraid of a plebiscite it is because of his apprehension that he cannot carry the country with him. If he is afraid of any other legislature but a packed Parliament in an indirectly elected legislature, it is because of his apprehension that so bitter a pill as this cannot be swallowed by any other. It is these apprehensions that make the hon. Minister and those of his way of thinking to rush the measure through this Legislature. Because my leader the Hon.

the Prime Minister stated that he stands or falls by this Code, and though that statement was made without the concurrence of the party, we have to stand by him. And we do stand by him, and I appeal to him and I do so through the Hon. Minister of Law……

Dr. Ambedkar : A bad medium.

Shri Syamnandan Sahaya : But that is the only medium left.

Shri Biswanath Das : If it is a bad medium, I leave it and I would appeal to you, Sir, for that is the only medium left to me now.

Mr. Deputy-Speaker : This medium is colourless.

Shri Biswanath Das : I appeal to him to eleminate the most controversial items in the Code so that there may be an easy passage. I have already stated, and I repeat it, that we cannot agree to this Code, and so far as I am concerned, even on my death-bed I will record my protest and say "no" to any attempt to constitute Hindu society on a rationalistic basis, as is being proposed in this Bill.

My hon. friend said that he was only making the legislation easy. As a student I knew, and most of my friends here also know that we were accustomed to read not text-books but "made easies". Some of the professors of the Calcutta university used to make a lot of money by bringing out such "made easies" editions. And I know the terrible trouble that the students had to take because of this. Hon. Members will find reference in the Calcutta University Commission's Report— I think it is the Sadler Commission's Report—to the system of cramming. It is called the "crammig system" and I refuse to follow that cramming system in Hindu Code ; and I implore my hon. friend not to think of constituting any society—leave alone Hindu society—on the basis of—I have no other expression by which to call it—of cramming.

To give an illustration from ordinary life there are among *Vaidyas* both learned and quacks. The learned *vaidya* never takes to *rasa* or *pashan:* they dread them. But a quack throws open his *batua* and immediately treats you with *rasa* and *pashan,* such as mercury and arsenic. I refuse to have this arsenic treatment from my hon. friend and I would beg of him not to apply the treatment to a society which has lived thousands of years with harmony. Looking at the history of the world you will see that the Hindu family or the Hindu home is the only happy home you find. There may be difficulties in some cases, they are bound to arise in a society of 30 crores of people. But the fact remains that you do not have here the horrible and tragic

incidents that mar the social life of the West. I do not say that our society does not want changes, it does. Have changes by revolution or evolution as you like but let proper consideration be given to them before you launch on a legislation of this character.

While talking of marriage under this Code, my hon. friend from Bihar, who is a jurist of eminence, stated that in marriage, the husband and wife are partners. I join issue with him on that. The Bill does not make them partners. If they were partners I would have little difficulty in accepting it. But the Law Minister is bringing contractual relations, thereby doing away with the sanctity of marriages enjoined by *samskara*. He is introducing contractual relationship of the Western type into our society and enforcing it in all its rigidity by means of registration. Are you going to have legislation for 'haves' or 'have nots' ? If you want to have legislation for 'haves' by all means have it with all your pleaders, vakils *advocates,* etc.....

Shri Syamnandan Sahaya : 'haves' do you mean those who have wives ?

Shri Biswanath Das : I am not concerned with them. You go to the mofussil. India lives in its villages and Indian life is village life. Barring the few upper class people, the rest of the people celebrate their marriages for ten, 15 or even less in some cases. You are now going to have registration departments with all their formalities, making it more expensive.

I want to know from my hon. friend whether he has calculated what the expense under this head is going to be to the State. I record my strongest caveat in this regard against the Bills that have been thrust upon this House without any calculation of the expenditure that a Bill entails on State Treasury in its operation. I was a member of the old legislative council and I know that under the Devolution Rules it was a part of the business of the then irresponsible Government to calculate the financial implications of each Bill. I have a claim to ask my hon. friend to give us the financial implications of a Bill of this important nature and the expenditure it will involve on the State treasury.

[MR. SPEAKER *in the Chair*]

You are going to have your cases mostly decided by the district court, which means a higher court than the Munsiff's court. As a member I am being called upon to give my assent to this Bill. I have a right to know what is the money that I have to spend under each

of the items. You are going to open registration department. You are going to have special marriage courts. I have a right to know what? you are spending now and what you propose to spend hereafter. It seems to me that the expense that the State would have to incur under this head would be unimaginable. Think of a population of 33 crores. You can laugh.....

Mr. Speaker : The hon. Member may address the Chair.

Shri Biswanath Das : I am sorry, Sir. The Hon. Law Minister may laugh or others may laugh. I do not worry. But I claim that Government have the responsibility to place a working sheet before the House to show what they would have to spend to give effect to the various provisions of the Bill as used to be done by former Governments. Taking one per cent of the total population as people resorting to courts your country will be flooded with courts and registration departments.

Mr. Speaker : May I point out that we are at present discussing clause 2 of the Bill which refers to the application of the Code. The point that the hon. Member seems to make relates to the cost to be incurred in the administration of the provisions of the Code. Could that not more appropriately be taken up when we consider the question of marriages ? In the clause where it is provided that marriages shall be registered this question will arise. This is not the stage of a general discussion of the entire Bill. We are at present at the clause by clause stage. Therefore, instead of interfering with the hon. Member's speech now and then, I would request him to reserve his remarks till we come to the clause which provides for compulsory registration of marriages.

Shri Biswanath Das : Sir, I thank you for the guidance you have given me, which I bear in mind. But I have also to make my submission in this regard. There are amendments to clause 2 to the effect that State legislatures may be given the option to give effect to the provisions of the Bill after it is passed into law. Therefore I submit the question of finance comes in prominently in various States. You have been good enough to refer to marriage. But it is not about marriage that you have to spend money.....

Mr. Speaker : I referred to marriage because the hon. Member was referring to it. It was only by way of illustration that I referred to it. The State Governments would be required to give effect only in case the amendment is carried. But assuming

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that that amendment is accepted, still effect will be given only to such provisions as are ultimately accepted by the House. So when we come to any provision which involves expenditure then it will be competent for the hon. member to advance that argument—not at this stage. That is what I was pointing out.

Shri Biswanath Das : Thank you very much, Sir. I would not go further into it.

Shri Syamnandan Sahaya : May I make a submission, Sir, in this connection ? Under our new rules every legislation which involves any expenditure has to be presented to this House accompanied by an estimate of such expenditure. Therefore, perhaps my hon. friend was referring to those rules……

Mr. Speaker : There is nothing to be further discussed about it. It does not affect the point of relevancy. But I believe this Bill was introduced long before rule came into force.

Dr. Ambedkar : Yes, Sir. And I can tell my friend that this Bill is going to be a revenue-paying measure.

Mr. Speaker : That is another matter. We are not concerned with it.

Shri Biswanath Das : My hon. friend says that this will be a revenue-paying measure…….

Mr. Speaker : We need not go into that now.

Shri Biswanath Das : Well my hon. friend claims the passage of this Bill and especially of this clause on the score that this is progressive. If it is so, I have no objection. If he convinces me that the legislation that he has adumbrated is progressive, I will certainly go with him. But I feel that it is as reactionary in certain respects as anyone could think of. I would in this connection invite my hon. friend's attention to the Child Marriage Restrained Act, an Act which has been in existence for the last twenty years or more and is a dead letter.

Several Hon. Members : No, no.

Mr. Speaker : Let him proceed. That is his opinion.

Dr. Ambedkar : His wrong opinion.

Shri Biswanath Das : I will be glad if it is really "no" but my experience is otherwise. But what has my hon. friend the Law Minister done ? Whether the Child Marriage Restraint Act is dead or is alive, what has my hon. friend done with his show of progressiveness ? He has kept up and carried on the same age of marriage of 18. Why

should you have the age of 18 ? I cannot see why he is so much enamoured of this 18. A boy to be put to married life and conjugal bliss in his eighteenth year is a thing unimaginable. I cannot think of it. I would appeal to him to consult his advisers of public health and ask whether such a course is desirable. Extend it to twenty or twenty-one years. If you really claim to be progressive, extend it. If you want to restrict, let the restriction be on justifiable grounds which will be for the well-being of the greatest number. That is why I claim that in certain respects the Bill is not at all progressive. In fact in ordinary instance you will not find people taking to married life at eighteen. Very few people do it. Therefore, the age limits of 18 and 16 that you have fixed in the Bill to me look retrograde from the national point of view. *(Interruption).*

Mr. Speaker : I must be very clear on this point that interruptions not only prolong the speeches but they add to the irrelevancies of the debate. I was again going to remind the hon. Member who is on his legs that he is going into questions which do not form the subject-matter of clause 2 or any of the amendments. He is now going into the age of marriage as if this is a general discussion on the Bill. I do not propose to allow any irrelevant discussion. We are taking the Bill clause by clause now; let us be strictly within the relevant scope of the clause. Otherwise we will never see the end of this legislation. I am not keen that it should be passed—it may be passed, it may not be passed—but at any rate I am keen to see that the debate on the clauses proceeds within the limits of relevancy and we go clause by clause to the end of the consideration. That is my point. I am not concerned one way or another. Therefore, the hon. Member will confine his remarks strictly to the provisions of clause 2 and the amendments thereto.

Shri Biswanath Das : Sir, I am very thankful to you but my reference was necessitated by the fact that my Hon. Friend the Law Minister claimed in the course of his speech that his legislation is a progressive one. Therefore, I was forced to say that it is not,

I have stated that the Code is intended for the "have-nots" and I have explained it. My objection to the clause is that the provisio to clause 2 is unnecessary and redundant. Unnecessary because it creates new complications and redundant because if anything is added without real necessity to the structure of the clause it creates further complications. Therefore, in any legislation such a redundancy is always given up.

I fail to see why sub-clause (4) is being retained. I don't mind the daughter having more than the son or the son getting more than the daughter. Let it be a matter between the daughter and the son. I for myself would not hesitate to accept Marumakkattayam law instead of accepting division of the family property into bits. That being so, if my hon. friend would propose to give all the property to the daughter I would not object. Let the women have it. In fact, in Malabar, the women are by inheritance having almost all the property. Therefore, you may do that or you can give the daughters and the sons equal rights : this is not a matter with which I am very much concerned. Speaking for myself. I have no daughter to claim any share from me, but I feel for the daughters in general. Now, if you add to the share that the daughter gets from her father's house by sub-clause (4), it means that you add to the financial possibilities of the women. She gets her *stridhan,* her share of the property and also special facilities as provided in the Special Marriages Act of 1872. Therefore, the continuance of sub-clause (4) is, I think, unnecessary also, I believe, unwarranted.

I feel that the time has come when something has to be done to change the social structures of India. That some has to be done with the concurrence of the people and the thinking sections of the society. Therefore, I appeal to the Treasury Benches and to you to see that Government remove the objectionable features of clause 2 as also of the Bill, so that the Bill will have a smooth passage.

***Shri M. A. Ayyangar :** At no stage of the Bill hitherto have I had the good fortune to take part in the debate. You, Sir, were absent in the earlier stages and I had to take the chair. I have always tried to keep my opinions to myself, but the time has come when I should express my opinion regarding this matter. Let me first of all declare to the House and to the hon. the sponsor of this Bill that I am not wedded to whatever is ancient merely because it is ancient nor opposed to whatever is new simply because it is new. Merely because something is old, let us not cling to it; nor decry something that is new because it is new. It is up to us, as wise men, to consider both the pros and cons and accept what is good and reject what is bad. I shall try therefore quite dispassionately to go through some of the points that have been urged. I shall not go over the ground and make this a speech on the second reading of the Bill, but whatever is relevant in general I shall address myself to.

* P.D., Vol. VIII, Part II, 7th February 1951, pp. 2517-31.

I shall, first of all, try to dispose of some of the amendments that have been placed before the House and the objections that have been raised in regard to them by the sponsor of this Bill. It is said in one of the amendments that because this bill has far reaching consequences it must be only an enabling measure, it is said that option should be given to any individual to declare that he will be governed by the provisions of this Bill from the date of registration or declaration to this effect. The Hon. the Law Minister said that down from the earliest times when legislation was embarked upon in this country by the Britishers, there has been no precedent whatever for a measure being passed and option being given to any individual or class to accept or reject that measure by declaration. I am afraid his memory is too short. Now, let us take the Cutchi Memons Act of 1920. Indians who got converted to Islam were very often governed by the Hindu law, the law in which they were born. So the Cutchi memons had the joint family law and they also made adoptions among themselves. But later on it was urged by some reformers that the Shariat, i.e. the law of Islam, should apply to all persons embracing Islam. Islam has its own code of laws regulating inheritance, marriage, succession, divorce etc. The Hindu faith has attached to it its own law made by the *smrithikaras* relating to the same items which are also regulated by the Islamic law. For those persons who got converted to Islam, an enabling provision was made in this Act whereby any Cutchi Memon who wanted to adopt the Hindu law could by declaration before a prescribed authority do so; he could either ask to be governed by the Hindu law or by the customary law which prevailed before his conversion.

Shri Raj Bahadur : That was a very special case.

Shri M. A. Ayyangar : I would refer to a general case also. My friend should be a little patient. Under the Cutchi Memons Act, as amended in 1923, there are the following provisions :—

"Any person who satisfies the prescribed authority—

(a) that he is a Cutchi Memon and is the person whom he represents himself to be;

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872; and

(c) that he is resident in British India

may be declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act, and

thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law,"

Now, the argument of my hon. friend Shri Raj Bahadur cuts his own case, because this was not a law intended for the whole of India but was a law specially to safeguard the interests of a particular community. This section is an enabling provision. Cutchi Memons are not the only Musalmans in this country. The majority of Musalmans far outweigh the Cutchi Memons. When 99.9 recurring per cent, of Muslims follow the Shariat, why should a special provision be made for the Cutchi Memons? Therefore, this interjection from my hon. friend, far from helping him, helps the other side. Even if there is one instance, it is enough. Now, is it possible for you to enforce Buddhism on me or for me to impose Hinduism on another man? This Jaw of inheritance, marriage, succession etc. is based upon the same tenets. But if a person who got himself converted wanted to be governed by the ancient law which prevailed before his conversion, he was given an option to change over to the other law. Though he got himself converted, he had to convert himself voluntarily to the new legal institutions, changing one from the other. There was no coercion whatever. But without the suggested amendment, this Bill will be a piece of legislation which is of a coercive nature, bringing various other persons into its fold. So far as Hindus are concerned, if you want to marry out of the ancient law, there is the Civil Marriage Act. It was originally intended to apply to persons who had to declare that they were neither Hindus nor Christians nor Jains nor Parsis. Later on, it was changed. No two Christians could marry unless they disavow their religion. No two Muslims could marry unless they disavow their religion under the Civil Marriage Act. But we are always progressive. We are selfdenying. We are all-embracing even to the point of self-destruction. We have amended this Act by saying that Hindus need not disavow their religion. Hindus, however they are married, may adopt the Civil Marriage Act.That is what we have done. What more is necessary ? Now you want to convert those people who follow the ancient law at the point of the byonet to your way of thinking. Why do you want me to change my religion? I have already quoted an instance where a special piece of legislation was made for the Cutchi Memons, a microscopic minority. It is because Dr. Ambedkar feels that a majority of us are archaic—to use the mildest word—that he

has brought forward this piece of legislation. It won't be wrong for me to say that he is still finding it difficult at the age of sixty to know to what faith he has to belong. But he is asking me to decide overnight that I should change. If I may raise my voice-let me not be misunderstood—I am as fit to be in the society as other members can claim to be. I am not ashamed of my religion. I am speaking not only to the men and women in this country but also to the outside world, that we have everything to be proud of the tenets by which we are governed and proud of the law that our ancients gave us. If only the other nations of the world followed our religion and the principles we have adumbrated there, there won't be these constant wars and all would be peace and peaceful. We are always accustomed to adopt things which are found wanting in the western countries. A motor car which has been discarded in Europe becomes a model of a car here; an institution which has been discarded in the west becomes a model in our country.

In 1937 we passed a law in this House that in the case of converts to Islam, their customary law according to Hindu system would prevail in regard to adoption etc. Similarly, in the South the Moplahs of Malabar had adopted certain of the Hindu customs, though they were Muslims. It is not even a question of adoption : they were born with such customs. Therefore, they followed one rule so far as their inheritance and succession was concerned and another rule so far as their faith was concerned. We passed in 1937 what was known as the Shariat Law. This is for all India and all Muslims. Section 3 of the Shariat Act says :

> (1) any person who satisfies the prescribed authority-(a) that he is a Muslim, (b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act (IX of 1872), (c) that he is a resident of British India—may by declaration in prescribed form and filed before prescribed authority declare that he desires to obtain benefit of this Act and thereafter provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to matters enumerated therein, adoption, wills and legacies were also specified.

Therefore, there is absolutely nothing novel in my hon. friend Shri Jaspat Roy's amendment. This is a measure which ought to be accepted cautiously. A majority of the community do not want this, and not only do they not want it, but also they are able to take care of themselves. Is this House particularly under the leadership of my hon. friend, entitled

to tell and advise people outside that what they are following is wrong and that they should change their method ? I am not basing my argument on the ground that this Parliament is not entitled to do that, though my personal view is that this Parliament cannot enact legislation in the way it was doing during the British days. We are now guided by a written Constitution. My own personal impression is that the personal matters of an individual, and the practice by which he is governed so far as his marital relationship is concerned are governed by his fundamental rights and should not be touched by anybody. So long as the practice which I follow and the procedure I adopt in regard to marriage is not opposed to public morality and is not obnoxious, or indecent, it is my own business and nobody has any right to interfere with it. Therefore, we have to go slow in this matter.

So far as the progressive elements are concerned, we have made a number of enactments now. The Hindu Widow Remarriage Acts are there. My hon. friend referred to the Child Marriage Restraint Act. True, it has put down child marriages. But it has put down marriages also. Everywhere a new problem has arisen : there are armies of unmarried girls today, there will be no dearth of girls if only you want to enlist them in the army as nurses or doctors. This is a new problem that you have created—have you heard of it before ? Our friends, including Pandit Thakur Das Bhargava, cried hoarse, that by early marriage girls became widows. But is there any guarantee that a man will continue to live, the moment he marries a girl of fifteen. I do not think God in his wisdom has arranged that a man marrying a girl of fifteen will live long, and that a man marrying a girl less than fifteen would die early. Therefore nobody can stand guarantee on this matter. It is a question of balancing the convenience.

We have not heard of any marriage except in the human kingdom. Animals don't marry ; there is no law of divorce among them ; they don't have family life. It is only with respect to human beings that the institution of marriage is prescribed as one of the *purusharthas* with a view to avoid inconvenience. As the Maharshi said, of the four *purusharthas,* the three, that is *Moksha,* the other word dharma, maintenance of society, and artha, politics or economics, depend upon a happy family life. This is one thing on which all our ancients laid emphasis, whereas in the Western society individualism has been all along in *excelsis.* Here family is the unit of our society. I do not mean to say that any human institution is so perfect as to obviate

any inconvenience. So far as our marriage laws are concerned, no woman remains unmarried unless she chooses to remain a *sanyasin*. A Sanskrit *sloka* says that no woman is entitled to freedom. But it has been mis-understood. A woman is not born twenty five years old. She is born out of a mother's womb, has to become an adult, marry and become old also. Both of them, whether a man or a woman, when they are in their teens are minors, have to be under the guiding hand of some other person. So long as the girl remains a minor the father has to maintain her. When she becomes old, is there any better person to look after her than her son ? Therefore at the dawn of life as well as at the close of life both man and woman depend upon the father or the son respectively. The only question is during converture. If God has created both man and woman, either the woman should go and live with the man or the man has to go and live with the woman. In a happy marriage the woman must live with the husband or the man must live with the wife. Is there a middle course ? I ask Dr. Ambedkar (*An hon. Member:* they live together). Yes, both of them live together. That is what I am saying. Therefore either the man's voice dominates in the House, or the woman's. Let us assume there is a difference. If the man's voice prevails there is no trouble. Or the man must get himself submerged in which case also there is no trouble. But if there is a difference between the man and the wife as to whom the girl should be given, when is the marriage to be celebrated ? I am only thinking aloud of the inconveniences. It is not as if man produces sons and woman produces daughters. In all seriousness I am addresing this House. What I am submitting to the House is this. Some people have misunderstood, merely because some of our sisters are going about with regard to their share and their sufferings—on account of the experiences that they possibly have had—and the corresponding chillness on the part of our friends here, that it is a woman's Code. It is something like a husband and wife quarreling "to whom does this child belong ? "It is not either to the one or to the other. Therefore, If this Code emerges, it will belong both to the men and women of this country. Let us therefore look at it dispassionately.

We have been brought up for three thousand years in a particular institution. I will presently quote a number of jurists who came from the West and who were attracted by the institutions that prevailed here. Some, of them even become converts and Max Muller created an *ashram* also. You have their opinions. They have compared their

own institution with that which was prevailing in this country. They wanted to be converted but for their social habits and customs which weighed strongly with them. As they got enamoured of our institutions we are also now getting enamoured of their ways.

Let us examine whether it is useful or not. Let us see what the authors, the Members of the Hindu Law Committee said. Mr. Rau himself said that this is a concurrent subject and as regards such of the chapters the Provinces may be left some voice as to whether this portion should be applied to this community or not. The territory to which it should be applied, whether it should be enacted at the present time or should be postponed all these are matters which any reformer, the sponsor of the Bill including, ought to take into consideration, so that there may be no impression let in the mind of any person that his conscience or religious faith or scruples have been trodden over. We have to gradually take people along. It is not as if we are declaring a war on Hindu religion. It is not an immediate question like deciding whether we should join America or not in declaring China as an aggressor. Here and there an inconvenience might have been felt by some people. I am asking this House, though you, Sir, to see the balance of convenience. It is not as if any human institution is perfect.

Without going into details, taking the question of marriage, it is a proved fact that till the Sarda Act came into being, the majority of our women—99 per cent of them—were married. Do you want to say, let women remain unmarried, let men remain unmarried, let there be children who have no parents—like forty thousand war babies to be taken care of by others ? Is it right for you to do so in our country ? You will be creating a new problem. Is it right ? So far either the man had to obey the voice of the woman or the woman had to subordinate her voice. Otherwise where is the house and the household ? That is exactly why the woman is not under the law. The modern woman who is educated in a foreign system, who has lost moorings in her own faith, wants that she should inherit the property of her father and not her husband. She is indifferent. She wants to have the money in her pocket and feel "Why should I be subordinate to a man ?" I know the difficulty in every household but if I am saying these things I am saying so with experience. Girls refuse to marry now because they feel "Why should I subordinate myself to a man ? Give me a portion of the property". Does my daughter expect me to live perpetually ? It is not money alone that makes for happiness.

Suppose there is a rich man and his daughter inherits his property. When she is married does it prevent the other man to belabour her and to beat her ? What prevents him from doing that ? Many people speak supporting this Code. I am not referring to Members of Parliament—they know everything. I am only suggesting what many people outside are saying. Today under the Hindu Law the girl is not absolutely taboo. If a man dies leaving no children behind, the widow inherits the entire property. Apart from Deshmukh's Act, under the ancient Hindu Law she is the heir of all the property of the husband in cases where there are no children. Secondly, if there is a daughter and the mother predeceases the father and there are no other children, she becomes the heir to the entire property. There is absolutely no difficulty. What is sought to be done here is that simultaneouly with the son the girl also must have a share. The responsibility of maintaining the household is that of the boy. We are not rich millionares. The *zamindars* have also been liquidated. *Rajahs* have gone. Only the middle class people are there. I am addressing myself only to them. There are the poorest people where both the husband and wife eke out their living by working as coolies. And what happens to the majority of middle class people ? The husband may be working as a clerk getting Rs. 100 or Rs. 200 a month. He educates his boy and expects that when he comes of the age of 21 or 25 he would take charge of the family at a time when he is himself fifty of fifty-five. When he retires there are a number of children to be taken care of. The property that he has accumulated is so small. I know in my part of the country persons who have any holdings over five crores are only ten or five per cent, of the entire persons holding land. Land is the wealth in our country. There may be a few industrialists in Bombay and a few in Ahmedabad. But generally people have neither industry nor land. The only industry for a middle class man is to become a clerk and earn some money, and by the sweat of his labour he earns it. The responsibility of looking after the family is thrown upon that boy. He may get a small land or a thatched house as patrimony. The society expects him to take charge of his younger brothers and sisters and also to maintain the old parents. When the Britishers were ruling us the officials in the Railway Department, station-masters and others, used to get passes sometimes in the year to go round. The pass is for the family. I am sorry to note that the same practice is still continuing as regards the description of the family, namely that the family means himself, his wife and children. What about the old parents ? This may

be in consonance with the western system where as soon as the boy comes of age he marries and goes away. The girl also marries and goes away. The old people have to be looking at each other's face ! Do we want that kind of animal life in our country ? I have no quarrel with the rest. It is a misfortune that the individualism is in *excelsis*. The husband and the wife are one unit and they ought to protect the old people. Our joint family system was brought about by our ancients many years ago and that is a natural unit and there the father, mother, the son and grandson all of them go together. I say that this is a happy unit where unemployment never existed. People who talk of socialism and communism pay lip sympathy and I say that this tendency is the germ of Socialism. The husband in a particular family works for the maintenance of his own children on the one side and for the maintenance of the older people on the other side.

In Madras after this marriage-divorce law was passed 38 applications were filed, *(interruption)* Boys alone can marry and no girl can marry a boy. Out of these 38 applications for divorce, 30 applications were filed only by the husbands.

The Deputy Minister of Food and Agriculture (Shri Tirumala Rao) : Are they from the middle-class ?

Shri M. A. Ayyangar : Most of them were from middle-classes, most of them were educated men, unfortunately in western style. As I said, the majority of the petitions were from husbands. I think there was only one case where a woman was said to be sterile. I would bring that under this Code. One other case was the husband, an educated lawyer and he is employed in Bombay. He gets Rs. 100 as salary. The girl is employed somewhere as a Doctor getting Rs. 400. The girl wants the husband and the husband wants the wife. The only pull was that the wife wants the husband to come and live with her and the husband wants the wife to come and live with him. After marriage this trouble has been going on between the husaband and wife for three years. The husband said : "How long am I to be without her company" and the Court found that it was a case of desertion by the girl and they dissolved this marriage. I ask all my sisters here present and others outside, in a widow re-marriage after the husband's death nobody knows whether the man has not touched the woman before her re-marriage. Even after this the widow-re-marriage has not progressed considerably. *(Interruption).* My friend says that what I say is a lecture. What my friend says is all truth. The Widow re-marriage Act was passed long ago but still it requires a lot of persuasion.

There was an hon. Member of the Assembly—he was a Member from Bengal—and he brought a single clause Bill which stated that no widower shall marry a spinster. His idea was that a widower may marry at least some widows and when some of our friends pooh-poohed the idea, he withdrew the Bill and said that he committed a mistake. When once a man has learnt that a woman has been divorced, would that woman be touched as a wife and married again as a wife ? I do not want the society to be disrupted in that manner to suit the few conveniences here and there of some individuals. There are difficulties but the other difficulty is far more appalling than this difficulty.

I was told this morning that some delegation is coming from Pakistan for the purpose of recovering abducted women. Have you ever heard of an 'abducted man' ? Nature has so made us that without the husband and the wife, there is no unity in this world. Even among the Patagonians the wife is as tall as the husband. In any other community the male is taller than the woman. Is it good if I talk like a woman with a squealish voice and a woman goes on talking like a man. Therefore I must be a man and a woman must be a woman. I see I am evoking laughter of my friends but I feel that God has made the best arrangement by creating a happy family in which the parents will be protected, the minor children will be protected. The affection is not as a result of wealth. Love and affection must flow of its own and it does not depend upon money at all. Most of us are poor and we marry and get a son and in our old age he takes charge of the management of the household and we feel that since we have discharged the responsibility to the aged parents, similarly he will maintain us in our old age. Sanction has the mighty force. That old law has much greater sanction than any other law which has prevailed so far for the last 3,000 years.

When I become a member of parliament you do not allow me to sit here unless I take the oath of allegiance, but so far as this marriage is concerned, I ask you all, are you to displace these old customs such as taking hold of a woman, taking her hand and placing her feet upon straw and saying that "our hearts are placed together like the Ganges and Jamuna" ? This is not such a drab affair. Is it for the purpose of conjugal facility that a man is marrying and a woman is marrying ? Our ancient scriptures enjoined it for the purpose of a happy married life and for the purpose of a good progeny. It is

not open to me to leave a legacy of blind, lame and dumb children to the rest of the community and ask them to take charge of them. Even among race-horses we talk of pedigree and for humanity alone any man can marry any woman and still expect the children to be perfect angles. The new marriage that is proposed will be like tying a race-horse to a lame donkey.

Jayaswal an able commentator of Hindu Law said that our ancients had big herds of cattle and they were also anxious to have first-class progeny so that they may take charge of the rest of the community. That is an honoured practice of our country. Hitler also wanted a good progeny for his country. Even Mussolini got a number of marriages celebrated in his country.

We say in or *Sastras : "Aputrasya gathirnashthi" ; "Punnamno Narakadyasmath thrayathe pithatram suthah"*. That is, the son saves the father from the *Naraka* called *puth*. It is that sanction that has produced a lot of children in our country. Otherwise, we would have had to give a hundred pounds to every mother to get children. Are we to pooh-pooh this culture ? What makes me say all this is that it is unfortunate that the Chairman of the Rau Committee is a gentleman who did not marry according to the Hindu law, Many of the Members of the Select Committee were not married according to the Hindu Law ; some were bachelors who did not marry at all.

Shri Kesava Rao (Madras) **:** Who says that they were not married ?

Mr. Speaker : Order, order. I think we are having this discussion a little beyond scope.

Shri M. A. Ayyangar : I will come within the scope of the Bill.

Mr. Speaker : He has already taken more than 35 minutes ; I am afraid it is rather too long. He may be short and to the point.

Shri M. A. Ayyangar : I am only referring……..

Shri Thirumala Rao : The reference is too personal with regard to the personnel of the Committee.

Shri M. A. Ayyangar : After all, let it not be said outside that that is quality opinion ; it is only a question of personal opinion. I am as much aggrieved about this. Am I to bow down when it is said of the *Smritikartas that they had absolutely no business to go on changing the smritis ?* What else are we doing ? We are passing a law in the morning ; we are amending it in the afternoon. The *smritikartas* wanted to change the *smritis* according to the changed

circumstances. They are tabooed as archaic persons. If they have changed, they are equally condemned for having changed. Why are there so many *smritis* ? Each is addressed to particular branch of law. My point is this. The reverence that is due in a change of law of this magnitude is not there. We are looking at the question from a different point of view. I submit that by means of this legislation Hindu society is cut vertically, horizontally, diagonally, into bits and bits. You say, let a man say, "I do not belong to Hinduism". Even the wording "professing the Hindu religion" is obnoxious. Why do you call yourself a Hindu ? What is there in Hinduism ? There are certain things ; there is the doctrine of *Karma* which even the Buddha and the Jaina believed. The *Vedas* are not peculiar to me. I believe in the hoary antiquity of the *Vedas* as an inspired document. Do not the Muslims believe that there is *a Veda.* Even the Sikhs who belong to a reformist religion, worship a Book. Why should I be ashamed of my *Vedas* and of calling myself a Hindu ? Whether I am a *Brahmo samajin,* or arya Samajam or a *Vaishnav,* if I do not believe in the *Vedas,* I am not a Hindu.

Unfortunately, in this country, religion has entered into politics also. It is said that on account of these vicissitudes of castes and creeds, so many Muslims became converts. I ask, was there not one religion in China, Buddhism; was there not one religion in Indonesia, Buddhism ? Where is Buddhism in Indonesia today : Where is Buddhism in Malaya? Were not a number of people converted to Islam in China ? Again and again, wherever there is any difficulty you attack Hinduism and say that it is this ancient system that is responsible for all this. I say, the remedy is elsewhere. Apart from its disadvantages, it is the Hindu system of marriage and not allowing a divorce, of property not being dissipated by division amongst daughters also, who have no responsibility to maintain the family, etc., that has been the source of strength to the people. I would ask a simple question. If the daughter gets married, do you ask me to live with my son or my son-in-law ? It is said : "*Jamatha dasamo grahah" ,* the son-in-law is the tenth planet. I must be supported by somebody in my old age. Why not live with the son instead of the son-in-law ? What happens if you give a share to the daughter ? Of course, she will say, "Come and live with me". But, my fate will be that of King Lear. I am appealing to all mothers and sisters to anxiously and seriously consider the situation. Let them not be under the impression that I have not consulted my partner at home. We have deliberated for a long time.

In these circumstances, I say, let us go slowly. Whoever wants to have liberal views, let him have his own way of life. Incidentally, I may say that *sati* is opposed to morality ; that was rightly put down. You say this is an enabling provision. Why don't you say that a brother may marry a sister ? That would also be an enabling provision. Up to certain limits we can go ; beyond limits, we ought not to go. We should not allow incest. The question is whether the marriage should be beyond three degress or seven degrees. I have also read some books on genetics. New things are being discovered. They say there are three kinds of blood and that one does not agree with another. I have also read astrology in the old school. They say that before marriage you must consult the *Rajju, Sarpa,* and *Gana* agreement. This *Gana* seems to have been discovered by the westerners. The late Dr. Rabindranath Tagore was a great poet; but we recognised him as a great poet only after the westerners recognised him. Similarly we want somebody from the west to come and say that marriages should be only of a particular order and that the points in the old *smritis* are very good. I am a conservative in the sense that I do not want to leap before, I know that the other ground is steady and strong I would only urge upon this House to stick on to whatever has endured you for such a long time.

Before I finish, I would like to refer to one other aspect of the question, that is the *Marumakkattayam law*. They are all intellectuals ; practically in the Secretariat, every Secretary is a Menon, coming from Malabar. I am proud of them. They have got a different way of life. Ask them if they are more happy. Why don't you impose this law on them also ? Take the *Aliyasanthana* Law. You may think that it is opposed to all nature, where a man visits his wife and the wife remains in her .house, where the children are maintained by the mother and her brother, not by himself. To you it may appear strange. Natural affection is different. Would I embrace my sister's sons with more affection, then my own ? Well that is their law and we are allowing them to continue under this law. But, when my hon. friend Pandit Thakur Das Bhargava says that there are certain customs in the Punjab, you say that they should be thrown overboard because my hon. friend is not so vociferous. After all, it is a wrong principle of jurisprudence. Law does not go in advance of custom. It is a human institution. It is something like saying that grammer does not go in advance of language. A child learns to speak first and then comes in grammer. It is a wrong principle of jurisprudence to say that custom is a wrong

thing. It is said that a custom, to have the validity of a custom, must be ancient, must be moral, must be definite, etc. These are principles under which customs will be recognised in courts of law. I say it is wrong to say that, notwithstanding the validity of any established practice, we abrogate that because we have come to a different conclusion. What right have you to say so ? It is not that I am questioning the competence of this Parliament to go into this matter. I am only saying to my Hon. Friend, let him not force this law on the community. It may become a dead letter. Let the people come forward and ask for these reforms. I would like to have statistics as to how many persons have married under the Civil Marriages Act. We may call the people ignorant; after all, time will judge whether they are ignorant. Therefore, I would appeal to hon. Members not to jump before you are sure of the ground Let us have piece-meal legislations. We had the Widow Re-marriage Act. We had the Act to give women the power to inherit property. We had the Act to restrain child marriages and so on. Therefore, I say, let us wait and see. Let us go slow. Noting will be lost thereby. Nothing will be lost because we do not allow divorce. Allow it to those who want a divorce. Let those who have solemised their marriages under the civil authority, to jointly make a declaration that they will be governed by the Civil Marriage Act. If there is a volume of opinion against a measure, let us try to change that volume of opinion. Let hon. Members consider the question coolly and deliberately. Let us not displace the existing system merely because something is novel or strange so that you may go with the rest of the universe. We understand what is meant by Christianity. Germany is a Christian country, but were there no fightings in Germany ? Do not Christians fight with each other ? How can we say that because of castes and creeds in our country the nation went down to the Greeks ? Why give a platform and a point to every other man to abuse us ? We have progressed, and progressed considerably. In Switzerland, they say no woman has a vote. Then why not our women go there and ask them to demand votes ? There is no use giving a lurid picture of our society and of our women. Our women have produced Sitas and Savitris. They followed their husbands. Perhaps we have now to follow our wives. Let them write our *Puranas* and say that men should follow their wives, if that would bring domestic peace. To-day we are husband and wife. To-morrow I go to a cinema and see a woman well made

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up with powered face and all that. Am I to come home and beat my wife, just because she is not as pretty as the one I saw in the picture ? And the next day, am I to apply for a divorce ? No. Woman is the weaker sex. Perhaps they may quarrel with me for saying so. But you cannot get rid of these institutions unless you pray to God to have only women in the world or only men. These institutions are very necessary. They are necessary for the proper balancing of domestic life. They are necessary in the interest of economy in the interest of solidarity and in the interest of avoiding unemployment and in so many other interests. If the husband dies, there is the brother-in-law to take care of the widow. We have also the maintenance laws to give at least a temporary strength to the widow, to stand by herself. I am only opposing those ladies who want to take away a chunk of their father's property and leave the husband alone. May God save us from them and from having an army of unmarried women.

Shri T. N. Singh (Uttar Pradesh) **:** Sir, I have an amendment in my name.

Mr. Speaker : All those who have tabled amendments and others also will get a chance.

***Shri Raj Bahadur :** I have listened very patiently to the speeches of the hon. Members who have spoken before me, although I raised certain pertinent questions for them to throw light upon. [I find myself in complete agreement with the provisions of this Bill.] And my support is based not on any misplaced ethusiasm or the rashness of youth, but because I feel that this measure is necessary because of the exigencies of the moment and the situation created by the attainment of independence by our country. I feel that unless we have a measure of this kind and keep peace with the times, we are bound to fail.

It is well known that perhaps during the last three years no other Bill or legislative measure has provoked so much controversy as the Hindu Code Bill, and passion, prejudice, sentiment and superstition have all come in to cloud our judgments. It is a little difficult in an atmosphere so surcharged with superstiton and suspicion for the country and also for this House to come to a balanced conclusion, a balanced judgment on the merits and demerits of the Bill.

The critics of the measure can be divided into three categories. First of all there are the people who like the Hon. Deputy-Speaker genuinely and sincerely feel that we are definitely marching ahead

* P.D., Vol. VIII. Part II, 7th February 1951, pp. 2532-36.

of the time and the adoption of a measure of this kind would do us harm, that it would harm Hindu society which would be irreparable. Then there are others who day in and day out criticise those who are responsible for this measure, and to them what matters is not what is being said, but who says it. These people have clouded the judgments of the masses also. It is well known that our masses are ignorant and they are tossed violently between these two extremes. It is also well known that when a country attains Independence, there is a natural desire felt by the people to have uniform laws and to codify their existing laws. This has synchronised with national awakening. This is not the first time that such a desire has been expressed by the Indian people, through their representatives in the Legislature. As early as 1921 there was a resolution to that effect by a Member from the Central Provinces. Shri K. J. Bagde and Sir Tej Bahadur Sapru was the then Law Member. The resolution was to the effect that all the various branches of the Hindu Law as then existing should be properly codified. From time to time this question was also raised in the Central Legislature and I find that as eminent a person as Shri Ganganath Jha has put a question on the floor of the House asking when the codification of Hindu Law would take place. We may note that that was also a period of national awakening and this desire to codify the law was being voiced at that time.

The option has been expressed that this Code should be made applicable to non-Hindus also, to Christians and Muslims and others also that there should be a common Civil Code. Articles in the Constitution have been referred to and it has been said that this Code violates some of those articles. But I am sure when the Civil Code comes up for consideration, these very same persons would come forward to say that this Civil Code violates article 44 which guarantees the liberty of thought or religion. That will be the objection raised, of that I have no doubt in my mind. The demand for a Civil Code, seems to be bogus and without any meaning.

If we apply our minds to the present condition of Hindu society we will find that there are various differences and divisions in various matters, in the matter of marriage, of adoption, of succession and soon. It is impossible for the country to make any progress unless there is some codification of these various laws. So far as other sections of society are concerned they have this in some measure. For instance, Christian and Muslim women have some rights and privileges which.

are sought to be given to Hindu women by this Code. Christian and Muslim women are now entitled in some measure to the right of inheritance. In the case of Muslim women, divorce is also obtainable to them.

An Hon. Member : No.

Shri Tyagi : It is not a right but a liability.

Shri Raj Bahadur : You may call it a liability but I would request you to apply your mind to the provisions of the Bill. There are many instances where a Hindu has deserted his wife for more than five years. Hindus have changed their religion and there are instances where Hindus keep other women while their first spouse is living. In such cases of immorality will you not come out with your galantry or chivalry and allow divorce to such miserable Hindu sisters ? The right has been given to a Hindu male to marry four or five times. If the sanctity of marriage is there it should be for both man and woman. If a woman is expected to be pure, chaste and faithful to the husband, is it not for the man also to bind himself by the same obligation ? Why should it be one-sided. If we say that man is God's favourite creature, it will not help our society or country in any way.

Let us look at it from another angle. In the present state of the world whenever there is a threat to the frontiers of a country and there is a war, it is not fought on the old lines. It is a total war. In the last great war while British men went to the trenches and the firing line, British women folk applied themselves to the various tasks of national responsibility. For example, they ran railways, worked on the buses and in ammunition factories. Unfortunately it is a fact that we regard woman as a liability, as something which is below ourselves. The common man's conception of a woman is that she is like the shoes on our feet. If they are torn we can throw them away and take a new pair.

An Hon. Member : Is that the conception in Rajasthan ?

Shri Raj Bahadur : That is so not only in Rajasthan but in most of our rural areas. It is so in high families also. It is time that we realise the bitter truth. It is time that we recognise it if we want to shoulder the responsibilities that have devolved upon us as a result of our independence. If we want to make our home and this country Bharat Varsh secure we should have to see that our women folk are brought on a par with man. It is not Westernism or Modernism but the exigencies of the moment that require it. You cannot face all the threats to your security as a nation unless you radically change our

attitude towards the women of our country. It is impossible to go ahead with the task of reorganisation of our country unless and until our women get the same status as man in our society and it is a patent fact that today that status is not granted to them. Unless and until the law that is there is codified and brought within the reach of the common man it will be impossible for our people to be unified.

May I in this connection refer in passing to the difficulties that we are experiencing today ? Our law has been what the British Judges in the Privy Council have interpreted till now. It is a well known fact that conflicting judgments exist on the same points. For example you can cite many contradictory rulings on either side. Apart from that the law as it exists today is only within the reach of experts, lawyers or judges and the common man does not know what the law is. Is it not good that by codifying the law and making it more rational by modifying it to the extent desirable, we may make the law within easy reach of the people ? Otherwise our progress towards unification and solidarity will be impossible.

The question before us is not whether we should codify. Even the bitterest opponents of codification have veered round to the opinion that codification is necessary. How far should we codify it, is the question. There are only three or four points which have aroused bitter controversy…….

An Hon. Member : This is not a general discussion.

Shri Raj Bahadur : It is a discussion on the points hon. Members have made that the whole Code should be made applicable to the entire nation.

Bitter controversy has raged firstly about divorce and marriage laws and secondly about inheritance. I will confine myself to these two important points. I would say that the provisions of the Bill and the latest amendments proposed by the Hon. Law Minister may be modified to a certain extent, if we find that we cannot go whole hog. But so far as the basic principle of divorce is concerned we shall have to recognise it.

I might give you an example. If a man happens to convert himself to Islam or any other religion, at the present time his wife and children are also compelled to do so. Is it not necessary that at least in such cases our women folk should be allowed to remain within the Hindu fold ? Can anybody object in principle to divorce being allowed in such cases ?

So far as inheritance is concerned I am not in favour of allowing the daughter any share after her marriage in the father's property. But if she is unmarried she must be allowed the same as her brother. That is an amendment which would meet the viewpoint of my learned friend Pandit Thakur Das Bhargava.

In conclusion, I would say that so far as the opposition to the Bill is concerned it has made out of certain political considerations also. The elections are looming large on the horizon and people consider any stick good enough to beat the Congress with. People outside the Congress are trying to whip up passion against the measure just because the elections are coming. They want to use it as a weapon in the election fight. It is therefore meet and proper that we should consider each provision of the Bill as coolly as possible, thrash out every issue threadbare, so that people may be able to see the Code in the proper light without the mist that now surrounds it. It is obvious that when we come to the clause by clause discussion, most of the superstitions and suspicions will be removed and controversial matters may be settled by mutual agreement and nothing will be there which will offend public conscience and public morality.

With these words, Sir, I oppose the amendments moved and support the clause

[MR. DEPUTY-SPEAKER *in the Chair.]*

Seth Govind Das (Madhya Pradesh) **:** First of all I want to say that it would have been very good if……

Shri Hussain Imam (Bihar) **:** On a point of information, Sir; Will the Hon. Minister of Works, Production and Supply, who is now here, tell the House about the tragedy of the Delhi clock tower ? The Delhi clock tower has fallen.

Some Hon. Members : This is not the time.

Seth Govind Das : You can ask that after the speech, not in the middle of it.

Mr. Deputy Speaker : It is possible some hon. Members are anxious to know what has happened. If the Hon. Minister has any statement to make he may do so after Seth Govind Das concludes his speech and we shall have an opportunity of having more information about the tragedy.

The Minister of Works, Production and Supply (Shri Gadgil) : I have learnt about it only an hour ago. Secondly, I am not

administratively responsible for what has happened in Delhi. The property known as the clock tower is managed by the Delhi Administration and probably by the Delhi Municipal Committee. But if it is the desire of the House that it should know some facts I shall try to contact the proper authority and at about five I may be able to give some information.

Mr. Deputy Speaker : Yes. The hon. Member may continue his speech.

***Seth Govind Das :** **(English translation of the Hindi speech)* Sir, I was submitting that it would have been very good if the Hon. Minister has not introduced this Bill at the present time. When I say this, it should not be inferred that I want to stick to the old customs or want to follow all that is given in our *Smrities* and *Vedas*. I have some knowledge of Sanskrit and I love my Indian culture, therefore, as far as *Smrities* and *Vedas* are concerned, they are not of the same opinion on every subject. If one *Veda* or *Smriti* says one thing regarding a particular subject another *veda* or *Smriti* says another thing regarding the same. We have always been lover of knowledge. Knowledge has always been given first place in our history and culture. We have admitted the fact that *Kalabheden dharma bhedah* i.e. Religion changes according to times. I admit that we need reforms and reforms should also be brought about through legislations. I remember the days when Raja Ram Mohan Ray pleaded the case for the abolition of *sati*. Even in those days there were people in the country who were in favour of *Sati* custom. I also remember those days when Iswarchandra Vidyasagar advocated the cause of widow remarriage and it was strongly opposed. Enough has been said regarding Sharda Act. I admit that child marriages have been prevented to a large extent due to the Sharda Act and to a greater extent this Sharda Act has tried to put an end to this bad custom of ours. Therefore, I admit that we have always been rational in our outlook. We should not follow the *Vedas* and *Smrities* blindly and we need laws to reform our society. But I could not understand one thing which our Minister said yesterday. He laughed at those persons who suggested that this Bill should be made applicable to the entire society as a whole. If we want to get our different societies knit in such a way, if we want to create such a society where there should be no class or caste distinction or so much difference as at present, then I submit that we need such a law

* P. D., Vol. VII, Part II, 7th February 1951, pp. 2545-49.

which may be applicable to the entire society without any distinction. Yesterday, the Hon. Minister made certain observations which in my opinion do not befit him, it is just possible that I may be wrong. I thought that he became somewhat irritated and lost his temper or he felt that we were putting obstruction in the passage of the Bill. But this is not the thing. This is the opinion of the most of the people, and I am one of them, that it would have been far better had this law been made applicable to the entire society without distinction. According to the Hon. Minister, it will be a matter of great pleasure if such a Bill could be introduced within two days. It will be very good if this Bill could be got passed within half an hour. It was not a good thing for our Hon. Minister, holding such a responsible post, to laugh at those people who hold different opinions than what he holds. It has been clearly stated in our Constitution, it may not be in the chapter relating to fundamental rights but it is in the preamble chapter:

> "That State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India."

It has been clearly stated in our Constitution. The Bill which has been presented before us today is opposed to this clause. We have suffered a lot as a result of this class and caste distinctions. After attaining independence, we framed our Constitution and this is the first social Bill which has been presented before us after the passing of the Constitution. We should have incorporated some of the ideals in this social Bill and that could have been easily done., if only this was to be applied to the entire society. If some clauses of this Bill are deleted and the good ones selected then a Bill could be prepared which could be applied to the entire society as a whole. Then, the people who are opposing this Bill today would not have done so.

There is one thing more and which is quite apparent. There are many good things in this Bill as well. I would rather say that it abounds in good things and the points of disagreement are very few. There is one important point in the fundamental things, which have been laid down in this Bill. One of the disputed points is that women should also be given the right of succession to property. It is easy to say a thing as my friend Shri Syamanandan Sahaya has done, I hold him in great esteem, by declaring that we already treat women as masters of our household. I would like to tell him that that is akin to the maxim "the safe is yours but let the keys remain with me." We have seen and are aware of the consequence's resulting from non-existence

of the rights of women to property. We know of the lives that many women had to lead. Will Shri Syamanandan Sahaya or those who are of his opinion deny the fact that many a chaste and respectable women belonging to wealthy families had to lose their prestige and status on account of having been left without property ? As far as I am concerned, I have, therefore, no difference of opinion about women's right of succession to property. The question is whether they should obtain share in the father's property or in the father-in-law's.

Giani G. S. Musafir (Punjab) **:** There is no objection to father-in-law's.

Seth Govind Das : So this is a big question. Today our system of marriage is such that the woman goes to her husband's place. There was also a time when there existed no system of marriage in the society. The story of Uddalak and Shwetketu in the Mahabharata clearly shows that there was a time when no marriage were held. Then came a period of matriarchy, where the husband used to go to the wife's place and the female child among their children inherited the property. That system still prevails in some places, in Malabar for example. Then the period of patriarchy came. Most of our social structure today comprises of patriarchy, not matriarchy, and how far would it be proper to make a woman inheritor of father's 'property in such society is a controversial matter. I would like to impress that so far as the women's right of succession to property is concerned that must be there, but that should exist in such a manner that an unmarried woman should be entitled to it at her father's place and a married one at her husband's.

There are also some other clauses of this Bill about which there may be a difference of opinion. So far as this Bill is concerned. It incorporates two things. First, various existing laws have been emalgamated. Secondly, some clauses for the purpose of social reform have been added. As I had just said, it would have been in the fitness of things had this Bill not come up. When our President Dr. Rajendra Prasad was the President of the Congress, he had pleaded for not presenting such a Bill and so according to him it had better not come up. But now it has been carried so far that if it is withdrawn at this juncture, various interpretations shall be forthcoming for that. The next election is before the people. I do not give very much importance to the elections and believe that the Congress is not so ineffectual that if the present Bill is passed and people are told that the Congress has done it, the Congress Party would be defeated. But if the Congress

is such a trifle that it can thus be defeated. I would say that the earlier it is defeated the better. So I differ from those who keep the elections before them and proceed with that point in view. I have recollections of 1923 and 1926 when the Swarajya Party went to polls for the first time. I was a candidate for the Central Assembly from the Zamindar party and it was being said that the Congress and zamindars were far apart, that zamindars would not vote with the Congress; but still nobody contested my seat. After that I stood again for the Council of State in 1925 and then too it was doubted whether the voters of the Council of State would vote for the Congress. Sir Manekji Dadabhai and Sir Hari Singh Gour opposed me, but I got three-fourth of the votes. Therefore, I do not consider the Congress to be a touch-me-not institution which may wane into a defeat if we pass such a Bill, which thought may continue to give us a constant fear of elections. I am of the opinion that if we are in favour of this Bill and if our leader, our Prime Minister, considers that it should be passed, it would be a mistake for us not to pass it for fear of elections. It is a different thing if we do not want to pass it. But if we do not pass it for fear of elections, there would be nothing worse than that. And I would say a word to those also who would not like to see it go through for fear of elections. If the Bill is not passed now, they shall find people saying that if the Congressmen were returned they would do such things as were not there even in the Bill. Such horrid pictures would be drawn before the people the like of which we cannot even imagine today. So we have not to deal with this Bill for consideration or fear of election. We have to deal with it on its merits. In this connection, I would reiterate before the Hon Minister what I have just said, namely, that the Bill has two parts—one of amalgamation and the other of social reforms. We are utterly opposed to many provisions of social reforms. I want that under the prevailing circumstances in the country all such provisions should be left out because their incorporation is inopportune. Things over which there is divergence of opinion should be excluded and those of amalgamation may be taken up. I make considerable distinction between these two things and wish the Hon. Minister to give sufficient heed to this suggestion of mine. I want that so far as amalgamation is concerned we should take that up as also the provisions with which we are not at variance and these provisions may be passed. Those provisions that are controversial and with regard to which there is going on a campaign

in the country should be left out. We must let the next election take place when representatives would be elected on adult franchise. If at that time we think it necessary to bring up the provisions concerning social reforms, we may move them as amendments to this present Bill and pass them. Such an approach will cover both the things. It would bring about an amalgamation of the laws and with that we would also avoid the controversial points.

One thing more should be done. As my friend Shri Jaspat Roy Kapoor said, its application should not be made obligatory on all people. Of course, such social reforms should be brought about through legislation ; but it is imperative to mould public opinion in their favour. It would not be ill-advised to make it applicable only over those who accept it and not try to make it binding on the entire population. Therefore, I would again submit that it were better for this Bill not to have come up before us at all. I am also of the opinion that in keeping with the ideals of our Constitution if we could make this Bill in the times to come applicable to the entire society, according to the amendments moved by Shri Jaspat Roy Kapoor or others we must endeavour to make it such. Along with this we should also endeavour not to make it applicable compulsorily over the people. It may be applied to those people only who accept it, or else in the existing conditions we may leave out its controversial portions and so far as the matter of amalgamation goes, we may do it in as much as we are unanimous about it.

***Shri Hussain Imam :** Sir, today I also want to speak in my own language as our Seth Govind Das has delivered a good speech."

Prof. Ranga : Why not speak in English, so that we may follow ?

Shri Hussain Imam : In considering the Hindu Code Bill, ordinarily, I would not have taken part in the debate, because it is a measure applicable to my sister community and as such they should have the right to have whatever they wish for themselves.

Shri Tyagi (Uttar Pradesh)**:** But the amendment covers you.

Shri Hussain Imam : That is the reason for my rising to speak. Some of my hon. friends are anxious to bring us under the purview of this measure. Well, there would have been no objection on our

*P.D., Vol. VIII, Part II, 7th February 1951, pp. 2550-55.

part to come under a common code had it been in advance of our own system. But my complaint is that it is very much backward ; and you want to draw up and bring us down to the level to which you have brought yourself down. I, therefore, wish to be excused from coming down to your level.

I may mention that the Hindu Code Bill has a very long history behind it. At one stage of it I had occasion to participate in the Committee on Hindu Law that was appointed in 1944-45. As such I have my sympathies with those who wish to advance the cause of the weaker sex. I believe that no country or society can advance if it has got submerged and suppressed people in its fold. It is very necessary that everyone should have equality before the law and in the matter of inheritance and other things. But it would be idle on our part to ignore the feelings of others. Feel as I may for myself. I must also realise what others are feeling, and as you, Sir, very poignantly pointed out, it is very necessary that there should be no dictatorship.

The Hon. the Law Minister in his speech in the Constituent Assembly, on the memorable day we completed the drawing up of the Constitution, said as follows :

> "It is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new— there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater."

I commend to him his own speech and ask whether it would not be dictatorship on the part of this house to dictate to the thirty-six crores of people of India to come under a law compulsorily, just as the old orthodoxy was denying the right of going forward to the more-advanced members of society. It is a dictatorship which a minority is going to exercise on a vast majority. I wish to tell my sisters and the reformist brothers that they must take heart. In everything there is a fair way of fructification. They have the whole field before them. I find that orthodoxy is not only not aggressive, but is on the defensive— is putting on the garb of reformists to fight its retreating battles. It is fast losing its momentum. We have the eternal dilemma of an irresistible force meeting an irremovable mass. But that mass is becoming every day lighter and lighter and its roots are getting uprooted

every day. Therefore, this orthodoxy will not remain adamant, as it has been in the past. But is it necessary that the reformist should become aggressive ? Should they play the game of the old orthodox people and try to dictate what they feel to be the best to people who do not regard them as the best but as the worst ? Why should you do that ? That is the question and in that question my community also joins.

We feel that our system of law, and our system of distribution of wealth is more democratic and more socialistic and more, if I may say so, akin to the communistic, than the system which is proposed in this piece of legislation before us.

I think the major amendments to clause 2 can be divided into three categories. Firstly, some of the amendments, notably amendment Nos. 13 and 14 of the Consolidated List want to increase its applicability. Amendment No. 13 of the supplementary list also. Then there are certain amendments, like No. 18 which wants to decrease its applicability. Then there is the third category, which wants to restrict its applicability to only those who wish to come under this. I think it is a very good media which has been suggested by Shri Jaspat Roy Kapoor and deserves the most serious consideration of this House— whether it would not serve our purpose by having a better code than the reformed Code which Dr. Ambedkar has brought before the House. He had to give some concession much against his wish.

I wish to state a few facts for the consideration of the House. These facts are that the Bill sought to be amended by Dr. Ambedkar is so materially different from the Report of the Select Committee that we should in common justice recirculate these amendments and get the opinion of the country whether they wish to have this in the form in which they have been brought or not, and there is no time for that. This House is under dissolution. It will last probably, if things do not move in an untoward direction—which may quite possibly happen on account of the war—for a few more months. Now, I ask my lady friends and reformists whether it would not be better for them to take up the challenge of the orthodoxy now. According to Shri Jaspat Roy Kapoor's amendment it is only a question of how far you are going to get the co-operation of the people to come and be under this Act. There is no occasion better than the election. In the election booth all the adult population of the country will be coming. If you have a system of registration running side by side with the

election booth and have a register in which every voter will put in. his thumb impression to indicate that he is willing to come under this Code, you can get the mandate of the people. Then you can confront orthodoxy and come and say that a vast majority of the country wants this reform, orthodoxy must go back and the day has been won for the reformists. But you do not do it. If you do not seriously convert the people to your idea, why do you ask that this body should get the odium of thrusting something on the people which it is professed they do not want and which you are unable to prove they want.

I therefore suggest that if the Hon. the Law Minister is not prepared to accept the amendment of my hon. friend Mr. Jaspat Roy Kapoor *in toto,* he may at least follow the example set in the *Shariat* Act of ours where parts of it were made compulsorily applicable to all but parts of it were reserved for only those who would come and get themselves registered. This is the second suggestion which I wish to make to the Hon. Minister.

Shri J. R. Kapoor : Will the hon. Member please say which are those parts ?

Shri Hussain Imam : I wish to state that there are certain parts to which very serious objection has been taken, notably by you, Sir, about the distribution of property to the daughter. If you want that this portion should not apply to all, you can make it a provision of this nature, namely, that this part—Chapter IV—may apply only to those who wish to come into it.

I would also mention the possibility of the grave dangers which this amendment of Dr. Ambedkar on the question of property has brought in. My valued friend Pandit Thakur Das Bhargava suggested that the girls should get a share while they are unmarried and when they get married they should be entitled to the husband's property in the father-in-laws's house. But you must not forget the divorced women. How has the modern Manu provided for them ? Dr. Ambedkar has not provided for the divorced women who are deprived of the share. He has provided for the share to remain permanently for the girl—half a share for the unmarried girl and quarter of a share for the married girl. But Pandit Thakur Dasji has suggested no share for the divorced woman. Under Dr. Ambedkar's rule she will continue to have a quarter of a share. But Pandit Thakur Dasji would deprive her even of that quarter share because as soon as she gets married she will have no share.

Pandit Thakur Das Bhargava : According to me she would be entitled to the rights of partnership in the property of the new husband.

Shri Hussain Imam : If she does not remarry ? I therefore think that another danger of the provision made by Dr. Ambedkar is that it might lead to immorality—the provision that on marriage a woman will lose half of her property and will be entitled only to a quarter of the father's property. A rich girl would never marry a poor husband.

Dr. Ambedkar : Why bother about the rich ?

Shri Hussain Imam : As long as you have not changed the system and do not go to the Moscow-Peking axis of my hon. friend Brajeshwar Prasad, you have to care for wealth and capital. When you come to that day you will no longer bother about this.

I was rather surprised that Dr. Ambedkar who is a born democrat should have made disparaging remarks about the electorate. The 'electorate with all its ignorance is the only touch-stone by means of which we can test democracy. If that is removed, democracy will become meaningless, lifeless and only an effigy of democracy. Because, what did Hitler do ? He had elections, but a system was evolved by means of which elections were made...(AN *hon. Member* : Easy)...not easy, but they were made only a cloak to cover the dictates of the dictator. The same thing will happen if we accept this dictum that the electorate has no right and the right is reserved to the Members of Parliament alone to decide whatever they like and in whatever manner they choose to do.

I would again mention one fact, not the competence of this House— I would be the last person, having been for twenty years in the Central Legislature, to question the competence of this Legislature—but would it not be better to leave a measure of this nature to the popularly elected representatives who would come to this House with the direct mandate of the electorate ? I am suggesting this as a method of finding out the will of the people. As long as we pay at least lip service to democracy our ultimate masters and the arbiters of our fate are the electors. This is going to affect all. I wish to warn the House that as against the Bill as reported by the Select Committee, as a result of the change of the Constitution, we are going to hit each and every individual property. Even a small farm of an acre of land is not free from the ambit of this new Bill, because land is now brought in under the purview of the Central Legislature, whereas what the Bill as reported by the Select Committee affected was only fifteen

to sixteen per cent of the population. Is it proper, is it democratic for you without going to a Select Committee even to so change the nature of the Bill that it will affect hundred per cent, of the citizens of India—because Land has now been brought into the purview of the Central Legislature ? I very respectfully beg to suggest that it is not proper for this Legislature, keeping self-respect in view, to go so much forward without even the formality of having a Select Committee to go over it. I know that now it is no good crying over spilt milk. But I am bringing all these arguments in favour of making this Bill elective. I do not say, having advanced so far and having made so many mistakes in the past, that you should now brush it away. But at least you should have the decency to say that you will allow the people to have their choice whether they wish to be under this Act or not. This choice may be either general as my hon. friend Mr. Jaspat Roy Kapoor has suggested, or it may be restricted as I am suggesting now for the consideration of Government. Government

[MR. SPEAKER *in the Chair*.]

have got ample time according to present estimates. The Bill is not going to be proceeded with immediately now. Therefore it is possible for Government to reconsider their position. In all humility I would appeal to Government to give if their best consideration and make it elective in full and if that is not possible for having it at least in part made elelctive and not compulsory. Otherwise it will be dictatorship and not democracy.

5 p.m.

Mr. Speaker : We will now take up the half an hour discussion.

Shri Gadgil : A request was made by hon. Members to let the House know about a certain accident that has happended in the morning in the Chandni Chowk.

Mr. Speaker : I think it had better be taken at 5-30 instead of now.

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***HINDU CODE**—*contd.*

Clause *2.*—*(Application of Code)*—*Contd.*

Shri Naziruddin Ahmad (West Bengal) **:** I have a point of order....

Shrimati Durgabai (Madras) **:** On what subject, may I know, is the hon. Member raising his point of order ? There is no subject before the House on which the point of order could be raised. First of all the motion should be moved.

Shri Sondhi (Punjab) **:** Who are you ? You are not sitting in the Chair (*Interruptions*).

Shrimati Durgabai : The motion must be made first.

Mr. Deputy Speaker : The business before the House is further consideration of the Bill to amend and codify certain branches if the Hindu Law, as reported by the Select Committee. Clause 2 of the Bill is under consideration.

Shri R. K. Chaudhari (Assam) **:** Before anything is said or done I would earnestly appeal to the House through you, Sir, that there need not be any unnecessary excitement. I am constrained to say that the conduct which has just now been shown by Shrimati Durgabai is far from such and is...(*Interruptions*).

Further more I wish to know whether the attention of the Government has been drawn to a Press news published yesterday, namely, that even if this Bill be passed the President may withhold his assent and so far..... (*Interruptions*).

Mr. Deputy Speaker : Order, order.....

Shrimati Durgabai : May I give an explanation since the hon. Member has referred to me ?

Mr. Deputy Speaker : Not while I am on my legs ...

Shrimati Durgabai : You must give me an opportunity to answer what the hon. Member has said (*Interruptions*).

Mr. Deputy Speaker : Order, order. The hon. Member who advised another hon. Member not to be excited is himself excited. One should sit on the right and the other on the left.

So far as the reference to the President is concerned his name ought not to be canvassed for the purpose of this Bill one way or the other. Rule 159 (vi) says that a Member while speaking shall not use the

*P.D., Vol. XV, Part II, 17th September 1951, pp. 2674-2738.

President's name for the purpose of influencing the debate. The President's name ought not to be referred to here at all.

Shri Kamath (Madhya Pradesh) **:** Not on a point of order, but on a point of propriety, when such a measure as the Hindu Code is before the House, is it quite proper for the Hon. Law Minister to have such a big basket before him ?

Shri R, K. Chaudhari : This does not fit in with the serious topic before the House. I want to know if it is a fact that the President will address this House on the Hindu Code.

Mr. Deputy Speaker : No reference to the President can be permitted irrespective of anything that might have appeared in the papers. Now, what is the point of order of Mr. Naziruddin Ahmad ?

Shri Naziruddin Ahmad : *rose—*

Sardar B. S. Man (Punjab) **:** Before the hon. Member makes his point of order, may I say, Sir, that you have made certain observations previously in the debate that in your kindness you show certain concessions to lady Members here. Now when we are going to discuss this Bill may I request that henceforward you will treat hon. lady Members and men Members on an equal footing and no concessions will be shown to lady Members ? It is high time for them to make up their mind either to have the concessions or to have the Hindu Code Bill (*Interruptions*).

Shrimati Durgabai : I would like the Chair to give a ruling. It was a fact that the Chair said sometime ago that special concessions were sought or asked for by the women Members and it is a fact that the women Members had emphatically protested that they did not want any special concession at all. Therefore, the hon. Member is quite wrong in saying what is not true.

Mr. Deputy Speaker : I am fully aware that lady Members do not want any special concessions for themselves : it could not have been their intention. If therefore, I had made any such remark I thought that it would be taken in good humour and it was not my intention to cast any reflections. I know very well that no lady Member has ever been in need of any concession or indulgence. So far as I am concerned I have got both sons and daughters, and therefore, I shall try to be absolutely just. Now what is the point of order ? With respect to points of order I may remind hon. Members that they may state their points cryptically without any arguments, unless I want some elucidation with regard to them. I hope hon. Members will bear this in mind.

Shri Naziruddin Ahmad : I shall state the point of order and elucidate it very briefly just to make it intelligible.

Mr. Deputy Speaker : If I fail to understand I will ask the hon-Member.

Shri Naziruddin Ahmad: My point of order concerns the applicability of the Bill to the former Indian States, some of which are now known as Part B States and some others have been incorporated in Part A States. The whole point is directed towards that question and I am directing my mind to that.

Hon. Members : What is the point of order ?

Pandit Maitra (West Bengal) **:** Is it the hon. Member's point that the Bill has not been published to them ?

Shri Naziruddin Ahmad : Yes, the Bill has not been published to them.

Mr. Deputy Speaker : I have understood the point of order.

10 A.M.

Shri Naziruddin Ahmad : I have to state a few facts.

Mr. Deputy Speaker : "Few facts" are not necessary so far as this point of order is concerned.

Shri Naziruddin Ahmad : There are rulings of the Chair on this point. I wish to draw your attention to this point which was raised by Mr. Sarwate on the 24th February, 1949 ...

Mr. Deputy Speaker : The House is on clause 2. Is this relevant so far as clause 2 is concerned ?

Shri Naziruddin Ahmad : Yes, clause 2 will also apply to the former Indian States.

Mr. Deputy Speaker : The hon. Member knows too well that the scope or the extent of the operation of this Bill is governed by clause 1. Clause 1 (2) says :

> "It extends to all the Provinces of India."

This point of order may be relevant as to whether in this unrestricted manner it ought to be allowed, or whether, as it was originally framed, it does not apply under the Constitution. There may be many reasons for and against, but the point of order may be raised at that stage, not at this stage. Now we are going into general considerations : if they do not apply to Part B or Part C States, we will restrict them when we come to clause 1.

Shri Naziruddin Ahmad : It will lead to inconvenience ; that will no doubt come formally, in due course : we should not be made to wait till that time.

Mr. Deputy Speaker : I have given my ruling. The hon. Member does not say that this clause 2 will not apply to any State whatsoever; if it applies even to a small village in a single State in the whole of India we shall proceed with clause 2. When we come to clause 1 we shall eliminate all the others where it ought not to apply under the Constitution.

Shri Naziruddin Ahmad : The difficulty is this. If the Members belonging to the States know before hand that the Bill will not apply to them, they will not trouble themselves about the matter and discussion will be shortened. But on the other hand, if they are in the dark as to whether it will apply to them or not, they will have to partake in the debate. So, in order to clarify the situation we ought to know where we are and where they are.

Mr. Deputy Speaker : The hon. Member knows too well that we come back, after exhausting all the other clauses, to clause 1. Any hon. Member who is a representative of the States may proceed on the footing that it will apply—he may do so in the first instance. Then he may make an effort along with Mr. Naziruddin Ahmad to get it out. There is time enough.

Shri Syamnandan Sahaya (Bihar) **:** Before we proceed with the Bill, I think the House is entitled to know the procedure which has been adopted from the papers we learn that only two parts of the Bill, concerning marriage and divorce, will be taken. It will be desirable for the Hon. Minister to explain the position so that the House may know in what direction we are proceeding and how this matter is ultimately going to be decided. That is one point to which I want to draw your attention, Sir, and the attention of the House. The other point to which I want to draw your attention and the attention of the Hon. Minister and of the House is this. Now the appearance of the Bill seems to be such that it is difficult to recognise it. As a matter of fact, the Hon. Law Minister himself, who is the Mover of the Bill, has sent in a very large number of amendments some of which reached us even yesterday. You will appreciate the importance of a Bill like the Hindu Code. You have also seen the seriousness that is attached to this Code by the Members of this House. We are really in a difficult position to find out suddenly what the amendments are, what the implications of those amendments

are, and whether amendments to the amendments should be sent because that is what will form the main basis of discussion, namely the amendments of Dr. Ambedkar. These are the difficulties that are facing us. In order that the Code may go through the House properly and ultimately the decision of the House may be such as to evoke respect in the country, it is desirable that some time is given so that the amendments may be read. You will remember, Sir, that when the Bill was introduced and sent to the Select Committee there was a Select Committee report. After that Dr. Ambedkar sent a large number of amendments. On the one side we have the amendments, on the other side the Select Committee's report; now, even those amendments are no more there-fresh amendments have been sent. All these are to be consolidated and placed in a manner in which they can be conveniently considered, and considered in a manner which the importance of the Code deserves. I think we should adopt some procedure by which these amendments can be considered carefully. I would also like the Law Minister to let the House know what is the latest decision of the Government with regard to the procedure to be adopted with regard to the Hindu Code.

Shri R. K. Chaudhari : I will put another question so that it may be answered along with this ...

Shri B. Das (Orissa) **:** May I submit, Sir. ...

Mr. Deputy Speaker : Nothing more.

So far as the amendments are concerned, a set of amendments were tabled by the Hon. Law Minister originally and subsequently to these amendments he has tabled another set of amendments.

The Minister of Law (Dr. Ambedkar) : A few—verbal.

Mr. Deputy Speaker : Even if they were substantial they have all been circulated as early as the 5th September. But if any hon. Member, during the course of the debate, move an amendment to any particular amendment, and if it is reasonable, we will consider it.

Dr. Ambedkar : Certainly, I have no objection.

Mr. Deputy Speaker : I am not going to be too technical with respect to those matters here. After all, the Hon. Minister has been saying that he would like to have as much as agreed solution to these problems as possible. Therefore, every efforts will be made on all sides of the House towards it. I shall never be wanting, if it is possible, in trying to smoothen and to get over the rules of procedure or to suspend standing orders for bringing about an amicable settlement so far as any clauses

are concerned. Hon. Members may have no difficulty. But so far as once again piecing the amendments together and circulating them again is concerned, hon. Members know too well how we were in an ocean of amendments so far as the Representation of the People Bill was concerned ; the Speaker could not know the amendments, a number of new amendments were given to the hon. Minister himself. This is not such a forest in which we cannot get in. After all, there are a few amendments to the original amendments and we can proceed.

Shri Syamnandan Sahaya : One other submission, Sir.

Mr. Deputy Speaker : Hon. members must make up their mind to go on with the Bill.

Shri Syamnandan Sahaya : That we have made up.

Shri B. Das : Is he permitted to speak again ?

Shri Syamnandan Sahaya : There is one other submission which I will make, Sir. We have been following a procedure, namely that all the amendments are first moved, then they are discussed together and then decisions are arrived at. I would submit that in the case of the Hindu Code that will not be possible because every amendment has a particular significance ; it is not a question of a cut motion being discussed or of a budget demand being discussed ; it is a question of every amendment having a particular significance, having a particular importance. Therefore, I would submit that in the case of the consideration of the Hindu Code these amendments should be taken up one by one ; each amendment should be taken up, discussed and then decided upon—either accepted or rejected—and only then the next amendment taken up. That, I submit, ought to be the procedure with regard to this Bill.

Shri R. K. Chaudhari : May I ask for only one piece of information ? There are certain amendments which have been tabled now after we had a discussion on this Bill in February last: these are new amendments which have been tabled since. I want to know whether those Members who had taken part in discussion in February will be entitled to speak on the new amendments now.

Mr. Deputy Speaker : I shall consider the suggestion when the time arises. So far as these amendments are concerned what I propose doing is this. Normally the procedure is that each amendment is taken up and disposed of and then we go to the next. But here, if there are amendments of like nature, except the form of expression if the

substance is the same then I will ask hon. Members to move all those amendments together so that a single discussion may proceed. Those amendments which are substantially different. I will place separately. It would be helpful if the Hon. Minister is able to tell me what all amendments are of like nature ; hon. Members may also consider the point when amendments are moved ; if they find other amendments which are substantially of a like nature they may also rise and ask that they be moved together, and the discussion will proceed on all of them together.

Shrimati Renuka Ray (West Bengal)**:** If people are willing, we might have a time-limit on speeches.

Hon. Members : No, no.

The Minister of Works, Production and Supply (Shri Gadgil): It will be better for the Chair to select a group of amendments which contain the same substance, and that group may be put down for discussion. That will avoid wastage of time.

Mr. Deputy Speaker : That is exactly what I said. I have no time to group them myself. I shall ask hon. Members, as soon as an amendment is moved by Dr. Ambedkar, whether they have amendments of a like nature relating to the same subject. If they have, then I shall piece them together and have a common discussion. That is for tomorrow.

As for today, let us proceed with the business. Clause 2 was under discussion.

Shrimati Renuka Ray : Would you put my suggestion to the House, Sir?

Shri Syamnandan Sahaya : Has the Hon. Minister got nothing to say on the points that I made ?

My Deputy Speaker : I do not think he wishes to say anything. Does he want to say anything ?

Dr. Ambedkar : No. Sir.

The Minister of Education (Maulana Azad) : The Prime Minister will explain it.

The Prime Minister (Shri Jawaharlal Nehru): I am sorry I was not here when the hon. Member spoke.

Mr. Deputy Speaker : He wanted to know if there are any portions of this Bill that are not to be considered. Clause 2 was under discussion previously and naturally I wanted the discussion to proceed and I was

about to allow amendments to be moved. Meanwhile, the hon. Member wanted to know whether the Hon. Minister is taking up any particular portions of this Bill first and giving them preference.

Shri Syamnandan Sahaya : In view of the reports in the Press, I wanted to know the correct position.

Shri Jawaharlal Nehru : I think the day before yesterday I did say something on this very subject, that is, we propose to take up Parts I and II of this Bill and if time permits we shall take up more. In any case, we do not want to leave the matter unfinished in regard to these two parts. We should like to finish them, even though in regard to the rest what we shall do depends on time.

Shri Kamath : Has any definite number of days been earmarked for the consideration of this Bill ?

Shri Jawaharlal Nehru : We expect that we shall finish it within this week.

Shri Syamnandan Sahaya : This month or this week ?

Shri Jawaharlal Nehru : This week, I said.

Dr. Ambedkar : With your permission, I should like to move amendment No. 4, in list No. 1. It seeks to substitute 'tribe or community' to bring it in conformity with the rest of the clause. I beg to move:

In the amendment proposed by me, printed as No. 3, after part (l) (i) insert:

"(ia) in part (c) (ii) for 'community' substitute 'tribe or community'; ".

Mr. Deputy Speaker : Amendment moved :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (l)(i) insert:

"(ia) in part (c)(ii) for 'community' substitute 'tribe or community'; ".

Dr. Ambedkar has already moved amendment No. 3 during the last session. That amendment and this one are before the House. Has any other hon. Member got amendments relating to the same subject ?— to the same subject, and not to clause 2 as a whole ?

Shri J. R. Kapoor (Uttar Pradesh) **:** Is it your intention, Sir, that if we have amendments to the amendments No. 3 and 4 of Dr. Ambedkar, we may move them ?

Mr. Deputy Speaker : Yes.

Shri J. R. Kapoor : So, with your permission, I should like first to move No. 95 of list No. 2. As a matter of fact, I had in my original notice given it as an amendment to amendment No. 3 of Dr. Ambedkar, but here it has been given as an independent amendment. That has been done by the office for the sake of facility probably. I am mentioning this only to avoid any objection from any quarter that No. 95 is not an amendment to the amendment of Dr. Ambedkar. I beg to move :

(i) For clause 2, substitute :

"2. *Application of Code*.—This Code applies to all the citizens of India that is Bharat, who after attaining the age of majority declare in writing that they shall be governed by this Code, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

Then, in the same context, I would ask your permission to move amendment No. 97 in list No. 2, I beg to move:

(ii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (2), insert:

"(3) After sub-clause (3), the following new sub-clause be inserted, namely:—

'(4) This code or any part or parts thereof also apply to any other person who after attaining the age of majority declares in writing that he shall be governed by this Code, or any part or parts thereof as the case may be, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and. divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, have made such a declaration.' "

I also beg to move:

(iii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (l)(ii) of the proposed amendment to sub-clause (1) of clause 2, after "Sikh religion" add :

"or to any other religion or faith except Muslim, Christian, Parsi, or Jew religion."

(iv) After part (c) (ii) of sub-clause (1) of clause 2, insert:

"(iii) to any orphan or abandoned child brought up by the State."

Shri B. K. P. Sinha (Bihar)**:** May I suggest that instead of hon. Members reading all the amendments, they may only refer to their numbers. Because the amendments sometimes tantamount to a speech.

Mr. Deputy Speaker : It is no good our closing our eyes. There is a limit to this kind of suggestion. The amendments must be read ; we cannot rush through like this. Certainly I will allow all reasonable debate on the matter. I myself am not able to understand at times. Except on formal matters, when I shall ask hon. Members not to read the amendments, the amendments must be read.

Shri J. R. Kapoor : Thank you for your direction, Sir.

Mr. Deputy Speaker : That does not mean that the hon. Member can be dilatory.

Shri J. R. Kapoor : If the suggestion of my hon. friend were to be pursued to its logical length, we can even say that all the amendments standing in the name of an hon. Member are moved.

Mr. Deputy Speaker : We need not dilate upon that.

Shri J. R. Kapoor : I beg to move :

(v) for sub-clause (3) of clause 2, substitute :

"(3) The expression 'Hindu 'wherever it occurs in this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless governed, or declares his consent in the manner prescribed by the Central government in this behalf to be governed, by the provisions of this Code."

Then I come to amendment No. 272 of List 5.

Mr. Deputy Speaker : I think we might take up sub-clause by sub-clause. There are a number of sub-clauses in clauses 2. Unless any amendment can be brought under anyone of these sub-clauses we shall carry on with sub-clause (1). Then we shall take up the other sub-clauses. What is the Hon. Minister's reaction to this suggestion ?

Dr. Ambedkar : I am quite agreeable to that.

Shri J. R. Kapoor : May I submit that all the amendments might be allowed to be moved. We shall follow the procedure we adopted in the Constituent Assembly from tomorrow onwards.

Mr. Deputy Speaker : Today, I leave it to hon. Members to move whatever amendments they like. Tomorrow I shall have them consolidated under each sub-clause.

Shri J. R. Kapoor : I beg to move :

(vi) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, for part (2) substitute :

"(2) for sub-clause (4) the following be substituted, namely :—

'(4) This Code or any Part or Parts thereof also apply to any other person who declares his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code or any part or parts thereof, as the case may be.' "

(vii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in the proviso to sub-clause (2), insert at the end 'unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also.' "

(viii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, . printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in sub-clause (3) for the words 'the provisions' the words 'any or more of the provisions' be substituted."

Or, in the alternative, if that be not acceptable to the House:

(ix) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in sub-clause (3) insert at the end 'in respect of any or more of the matters dealt with herein'."

Mr. Deputy Speaker : "Any one or more" is the usual expression. Is it not?

Shri J. R. Kapoor : I agree, Sir, to your suggestion. This exhausts my amendments to amendment No. 3 of Dr. Ambedkar.

There is one amendment which I seek to move to my own previous amendment moved during the last session.

I beg to move :

(x) In the amendment proposed by me, printed as No. 93, to the proposed clause 2, add the proviso :

"Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

Mr. Deputy Speaker : A similiar amendment has already been moved.

Shri J. R. Kapoor : This is an amendment to my own previous amendment. Then I wish to move my amendment No. 125.

I beg to move :

(xi) To clause 2, add the proviso :

"Provided that the provisions of parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisions, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government:

Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

There is only one more amendment, notice of which I have given this morning. It is a small amendment and with your permission I shall move it.

I beg to Move :

(xii) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (1) (ii), insert :

"(iii) insert a new part (e) as follows :

'(e) to a convert to any religion or faith after the commencement of this Code'."

Mr. Deputy Speaker : That is, if on the date of the commencement of this Code there is a Hindu, even if he changes his religion after the commencement of this Code it is this Code which will apply to him notwithstanding the change of religion. Is that the intention ?

Shri J. R. Kapoor : The intention is that if any person changes his faith after the commencement of this Code, then this Code shall apply to him. Suppose a Hindu changes his faith after the commencement of this Code and becomes a Muslim, even then it will not be open to him to have two, three or four wives at a time as he likes. That is, it should not be open to anyone to convert himself into a Muslim in order only to get over the provisions of this Code and to have more than one wife. There are other implications also of my amendment but I have explained this one important implication.

Shri Naziruddin Ahmad : One wife will be sufficiently difficult; two wives would be out of the question !

Mr. Deputy Speaker : Today I will allow all amendments to be moved to clause 2— both to the original clause and to the amendments of the Hon. Minister. I shall try to put them together tomorrow.

Pandit Thakur Das Bhargava (Punjab) **:** May I know if any of the amendments which my hon. friend has just now moved were moved in the February session also ? I think one of the amendments moved now was debated in the House—the amendment relating to a person declaring that he will be bound by the Code. I think he also made a speech on that. I do not know if that amendment has not already been moved and also debated upon.

Shri J. R. Kapoor : I may assure my hon. friend that I have taken jolly good care to see that I do not repeat any one of my previous amendments. Of course the subject matter of some of these amendments was incorporated in some form or another in a previous amendment that I have moved. But finding that, that particular amendment would not well suit the purpose, and in order to meet the objection raised then by my hon. friend Pandit Thakur Das Bhargava, I have further amended my previous amendment so as to bring it perfectly within the four corners of the Code and also to. make it otherwise acceptable.

Shri Syamnandan Sahaya : I beg to move :

To clause 2, add the proviso :

> "Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

Sardar B. S. Man (Punjab) **:** I beg to move :

In clause 2, omit "Sikh", wherever it occurs.

Mr. Deputy Speaker : The hon. member's desire, I take it, is that it ought not be apply to Sikhs.

Sardar B. S. Man : Yes.

Mr. Deputy Speaker : At each stage let us know what the scope of the amendment is ?

Pandit Thakur Das Bhargava : Such an amendment has already been moved. The subject-matter of amendment No. 236 is the same as Sardar Hukam Singh's amendment.

Mr. Deputy Speaker : Let us forget what all has been done. Let us start. The intention of the House is to proceed clause by clause and

have a connected picture—and so there is no harm if there is a repetition or if it is moved once again so as to focus attention.

Pandit Thakur Das Bhargava : In that case in the February session I moved an amendment and also made a speech on it. Is it necessary for me to move it again ?

Mr. Deputy Speaker : It is not necessary.

Dr. Ambedkar : No, we know them.

Shri R. K. Chaudhari: May I draw your attention to amendment No, 123 ? This stands in the name of Shri Jhunjhunwala who was here just now. But he asked me to bring this to your notice because he has gone outside the House owing to an urgent call. So he will come and move it.

Mr. Deputy Speaker : Let him come. After he comes he can move it.

Shrimati Renuka Ray : You were kind enough to say this morning that amendments where the subject-matter is the same should be moved together. I want to ask whether you are allowing such amendments which were moved and on which speeches were made for three days, to be moved once again.

Mr. Deputy Speaker : They are pending.

Shrimati Renuka Ray: Certain amendments were moved and speeches made on them in the February session for three or four days. I want to know whether those are to be repeated now.

Mr. Deputy Speaker : What I propose to do is this. If any particular Member who has already moved his amendments wants to draw attention to them. He can indicate those amendments. I will make a note, the office also has a note. So that when the time comes I will put them. In so far as speeches have already been made I shall take care to see that there is no repetition of them. That is all that I can say.

Shri Kamath : But discussion on those amendments is not barred. Does it mean that all those amendments have been disposed of ?

Mr. Deputy Speaker : No. All the amendments are under discussion. No amendment has been disposed of.

Shri Naziruddin Ahmad : There is bound to be a certain amount of repetition because the House has meanwhile forgotten everything.

Mr. Deputy Speaker : The hon. Member knows how helpless I have become even if repititions are made. Therefore, I suggest to myself mat I should be a little more careful.

Dr. Tek Chand (Punjab)**:** I beg to move : -

In part (a) sub-clause (1) of clause *2,* for "members", substitute "followers".

it is only a formal amendment and Dr. Ambedkar has agreed to accept this. The clause will then read : "and followers of the Brahmo, the Prarthana or the Arya Samaj".

Shri Bhatt (Bombay) **:** I beg to move :

For sub-clause (2) of clause 2, substitute :

"(2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu law or by any customor usage as part of that law in respect of any matters dealt with herein."

I have tabled no other amendment. But Dr. Ambedkar has used the word 'community' with 'tribe', will he not also put in the word 'clan' with them ?

Shri Barman (West Bengal) **:** I beg to move :

In the proviso to sub-clause (2) of clause 2, for "in respect of those matters" occuring at the end, substitute :

"in respect of matters which that person has not voluntarily chosen."

Mr. Deputy Speaker : The hon. member wants to give an option for him to come into the Hindu Code.

Dr. Ambedkar : Something like that.

Shri Barman : My intention is that a person who has voluntarily chosen to adopt the customs and usage of the Hindu law will not be allowed subsequently to say that he is not governed by them, but any third person may challenge or may prove that, that person was not governed by the Hindu Code and as such as regards the other matters the Code will not apply to him ; but as regards the matter which that person has himself voluntarily chosen, other persons would be precluded from challenging him.

Mr. Deputy Speaker : If he has already chosen, he will not be governed by the earlier portion of the Hindu Law. Perhaps the hon, Member wants to make it more clear.

Shri Naziruddin Ahmad : I beg to move :

(i) Omit part (b) of sub-clause (1) of clause 2.

(ii) In part (a) of sub-clause (1) of clause 2, for "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion".

Mr. Deputy Speaker : That is the same thing as the Hon. Minister's amendment.

Shri Naziruddin Ahmad : There is a verbal change.

Then, I beg to move :

(iii) For part "(b) of sub-clause (1) of clause 2, substitute:

"(b) to any person who is a Jaina by religion."

Mr. Deputy Speaker : It is an alternative amendment.

Shri Naziruddin Ahmad : Yes, Sir.

Then, I beg to move :

(iv) In part (b) of sub-clause (1) of clause 2, for "Jaina or Sikh" substitute "or Jaina".

Mr. Deputy Speaker : He wants to eliminate the Sikhs and Buddhists.

Shri Naziruddin Ahmad : Yes, Sir.

Dr. Ambedkar : There are varities of amendments.

Shri Naziruddin Ahmad : Some of them are alternatives.

Dr. Ambedkar : One amendment says that Buddhists and Sikhs should be omitted and another says Jains should be omitted.

Mr. Deputy Speaker : The hon. Member does not want the Jains to be omitted.

Shri Naziruddin Ahmad : 'Jains' should stand. These are different variations of amendments, because hon. Members do not know which will be acceptable to the House and particularly by the Hon. Minister.

Mr. Deputy Speaker : In all his amendments I find that the 'Jains 'is the common factor. He wants the others, that is, the Buddhists and Sikhs to be omited.

Shri Naziruddin Ahmad : 'Jains' I have not objected but the Sikhs have seriously objected.

Mr. Deputy Speaker : They are now governed by the Hindu Code.

Shri Naziruddin Ahmad : The whole question is whether this kind of Hindu law should be forced upon them ? They are Hindus no doubt, but should this kind of non-Hindu Law or rather un-Hindu Law be forced upon them ?

Then, I beg to move:

(v) In part (c)(i) of sub-clause (1) of clause 2, after "illegitimate" insert:

"who, if he has attained the age of eighteen years, is himself a Hindu and"

(vi) In part (c)(i) of sub-clause (1) of clause 2, after "parents are" insert "or have been".

(vii) In part (d) of sub-clause (1) of clause 2, at the end, add : "subject to his rights and liabilities before his conversion."

Mr. Deputy Speaker : Let me pause here. Let us understand the implications of this. Shri Jaspat Roy Kapoor wants that notwithstanding change of religion by a Hindu after the passing of this Code, his rights and liabilities must be regulated by the Hindu Code. This amendment wants that if a person wants to change and become a convert, his rights and liabilities under his original religion ought not to be affected.

Shri Naziruddin Ahmad : If he is wrong, I am also equally wrong. We are in a vicious circle. That goes against the very idea of conversion. If a man is converted, he loses his past and begins a new chapter. As Mr. Kapoor has submitted his amendment, I am submitting this amendment. Both should be accepted or both should be rejected.

Mr. Deputy Speaker : Both the hon. Members want to avoid any change in their legal or civic rights as a result of conversion. Conversion ought not to affect their rights and liabilities with respect to property, succession, etc.

Shri Naziruddin Ahmad : There is an old Act which saves the past rights of Hindus converted to Christianity. That also reserves past rights and liabilities.

(viii) Then, I beg to move :

After sub-clause (1) of clause 2, insert :

"(1A) This Code shall not apply to the Scheduled Castes and Scheduled Tribes."

Dr. M. M. Das (West Bengal) **:** May I know what right the hon. Member has got to speak on behalf of the Scheduled Castes ?

Shri Naziruddin Ahmad : At present, I am only moving my amendments. I am not trying to explain them ; I am not now trying to convince my hon. Friend.

Mr. Deputy Speaker : There are some people who are more loyal to others than others themselves.

Shri Naziruddin Ahmad : I shall state my reasons. There are certain parts of the Code which would be too much for them to

assimilate. For example, they have very simple forms of marriage and divorce. You are making their life more complicated.

Mr. Deputy Speaker : The hon. Member forgets that his objection is to the whole Code. If it is said that they have got simpler forms of marriage and divorce and these forms need not be introduced, that is a matter for consideration. (The whole Code goes out as if they do not belong to the Hindu community.)

Shri Naziruddin Ahmad : My objection is to the whole Code as well as every part—singly as well as taken as a whole.

Mr. Deputy Speaker : The hon. Member forgets that there is a consolidating portion also ; by his amendment even those portions for which no exception could be taken would not apply. We are only preliminarily discussing what exactly the hon. Member wants.

Shri Naziruddin Ahmad : Then, I beg to move:

(ix) Omit sub-clause (2) of clause 2.

Mr. Deputy Speaker : This is the residuary amendment. This seems to be absolutely meaningless. What is the Code which should govern ? The Indian Succession Act ?

Shri Naziruddin Ahmad : There may be a man who may have a new religion. There is in Japan a religion known as Shintoism. If a person professing that religion comes to India, would you apply the Hindu Code or the Muslim Code ? He should be governed by his own Code. The proviso says that if it is "proved" that another law applies to him, then the Hindu Code would not apply. Upon whom will the onus lie ? Suppose a man comes to India professing no religion. He has civil rights and liabilities. Would he be governed by the Hindu Code ? Why not the Muslim Code or the Christian Code or the Sikh Code ? Every man should be governed by his own Code. I shall explain this proviso at the proper time. This proviso also goes too far. It throws the onus upon a person coming into India who is not a Muslim, Christian, Parsi or Jew by religion, to prove his status. How can he prove that the Hindu Code does not apply ?

Mr. Deputy Speaker : He would be governed by private international law. Merely because he comes here, the Hindu Code would not apply.

Shri Naziruddin Ahmad : The point is that the onus is thrown upon a stranger who might find himself absolutely in hot waters.

Shri J. R. Kapoor : This Code applies to non-Hindus to whom some portions of the Hindu law or customs under the Hindu Law are

applicable. This proviso does not apply to anybody to whom no part of the Hindu law is applicable.

Shri Naziruddin Ahmad : The whole applicability of the Code goes by the wording of the Act and not on its so called internal meaning.

Shri J. R. Kapoor : The wording is clear. The proviso says: "Provided that if it is proved that such person..." "Such person" means the person referred to in sub-clause 2 and not a person coming from America or England.

Shri Naziruddin Ahmad : I beg to move :

(x) Omit sub-clause (3) of clause 2.

To me, this sub-clause is to beg the question. It says :

> "The expression 'Hindu' in any portion of this Code shall be construed as if it included a person who, though not a Hindu by, religion is, nevertheless, governed by the provisions of this Code."

This is the very question we have to clarify. To whom does this Code apply ? We say, if the Hindu Code is applicable to any one, he is bound by it. The question is to whom, apart from the Hindus, this Code should apply. It is begging the question to say that the expression 'Hindu' applies to whom this Hindu Code applies. We shall have to clarify the matters. I do not claim infallibility. But, I have felt some difficulty.

Then, I beg to move :

(xi) Omit sub-clause (4) of clause 2.

Dr. Ambedkar : That is also my amendment.

Shri Naziruddin Ahmad : I also beg to Move :(xii) After sub-clause (4) of clause 2, insert:-

> "(5) Notwithstanding anything in this section, this Code shall apply only to such areas or to such persons or classes of persons in any State and from such time or by such stages as the State legislature may from time to time by Act provide."

Mr. Deputy Speaker : So far as this amendment is concerned, we shall have to consider whether this is the proper place where this amendment should be considered, or it should be……..

Dr. Ambedkar : It should come under clause 1.

Shri Naziruddin Ahmad : If you think that it will be properly considered along with clause 1……

Mr. Deputy Speaker : This amendment stands over and will be taken up when we come to clause 1.

Shri Jhunjhunwala (Bihar) **:** I beg to move :

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in the above clauses this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

I have moved an amendment where I had placed the burden on the persons to get themselves registered who want to be governed, and if that is not accepted, here I have placed it on those who do not want to be governed by this Code.

Shri Bhatt : I beg to move :

In sub-clause (3) of clause 2, after "nevertheless governed", insert "or desire to be governed".

Mr. Deputy Speaker : I shall formally place the amendments before the House. So far as the amendments to clause 2 that were moved last time are concerned, they are already before the House. Hereafter all amendments must be moved at the beginning of the discussion, because if they continue to be moved when the discussion is in progress, hon. Members who have already taken part in the discussion may not be able to take part and speak on those new amendments. It is not a technical objection. These may be amendments of substance and hon. Members who have already spoken with reference to other amendments earlier, may not be sole to take part in the discussion on these new amendments. But in the present case, if there are any such hon. Members I shall consider and give them also a chance, if necessary....

Dr. Ambedkar : A small chance.

Mr. Deputy Speaker : A small chance. But they may not repeat what they had already stated. Barring that, in future, my request to hon. Members is that all the amendments may be moved when a particular clause or sub-clause is begun. Otherwise we will have to go on repeating the process, allowing the Members to move amendments, and going over the whole matter once again.

I have already placed before the House the amendment moved by the Hon. Dr. Ambedkar today. I will now place before the House the other amendments moved today.

Amendments moved :

(1) In the amendment proposed by Shri J. R. Kapoor, printed as No. 93, to the proposed clause 2, add the proviso :

"Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

(2) for clause 2, substitute :

"2. *Application of Code.*—This Code applies to all the citizens of India that is Bharat, who after attaining the age of majority declare in writing that they shall be governed by this Code, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

(3) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (l)(ii), insert:

"(iii) insert a new part (e) as follows :

'(e) to a convert to any religion or faith after the commencement of this Code'."

(4) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (l)(ii) of the proposed amendment to sub-clause (1) of clause 2, after "Sikh religion" add :

"or to any other religion or faith except Muslim, Christian, Parsi or Jew religion."

(5) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in the proviso to sub-clause (2), insert at the end 'unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also'."

(6) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in sub-clause (3) for the words 'the provisions' the words 'any or more of the provisions' be substituted."

(7) in the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in sub-clause (3) insert at the end 'in respect of any or more of the matters dealt with herein'."

(8) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, for part (2). substitute :

"(2) for sub-clause (4), the following be substituted, namely :—

'(4) This Code or any Part or Parts thereof also apply to any other person who declares his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code or any part or parts thereof, as the case may be'. "

(9) In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (2), insert:

"(3) After sub-clause (3), the following new sub-clause be inserted, namely:—

'(4) This code or any part or parts thereof also apply to any other person who after attaining the age of majority declares in writing that he shall be governed by this Code, or any part or parts thereof as the case may be, and get such declaration registered in accordance with rules prescribed for the purposes by the Central Government:

Provided that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and the bridegroom before the marriage, or both the husband and wife after the marriage, have made such a declaration'. "

(10) In part (a) of sub-clause (1) of clause 2, for "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion".

(11) In part (a) of sub-clause (1) of clause 2, for "members", substitute "followers".

(12) Omit part (b) of sub-clause (1) of clause 2.

(13) For part (b) of sub-clause (1) of clause 2, substitute :

"(b) to any person who is a Jaina by religion."

(14) In part (b) of sub-clause (1) of clause 2, for "Jaina or Sikh" substitute "or Jaina".

(15) In clause 2, omit "Sikh", wherever it occurs.

(16) In part (c)(i) of sub-clause (I) of clause 2, after "Illegitimate" insert:

"who, if he has attained the age of eighteen years, is himself a Hindu and."

(17) In part (c)(i) of sub-clause (1) of clause 2, after "parents are" insert "or have been".

(18) After part (c)(ii) of sub-clause (1), of clause 2, insert:

"(iii) to any orphan or abandoned child brought up by the State."

(19) In part (d) of sub-clause (1) of clause 2, at the end, add : "subject to his rights and liabilities before his conversion."

(20) After sub-clause (1) of clause 2, insert:

"(1A) This code shall not apply to the Scheduled Castes and Scheduled Tribes."

(21) Omit sub-clause (2) of clause 2.

(22) for sub-clause (2) of clause 2, substitute :

"(2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu Law or by any custom or usage as part of that law in respect of any matters dealt with herein."

(23) In the proviso to sub-clause (2) of clause 2, for "in respect of those matters" occuring at the end, substitute :

"In respect of matters which that person has not voluntarily chosen."

(24) Omit sub-clause (3) of clause 2.

(25) for sub-clause (3) of clause 2, substitute :

"(3) The expression 'Hindu' wherever it occurs in this Code shall be construed as it included a person who, though not a Hindu by religion, is nevertheless governed, or declares his consent in the manner prescribed by the Central Government in this behalf to be governed, by the provisions of this Code."

(26) In sub-clause (3) of clause 2, after "nevertheless governed", insert "or desires to be governed".

(27) Omit sub-clause (4) of clause 2.

(28) To clause 2, add the proviso :

"Provided that the provisions of Parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisions, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.

Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

(29) To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

(30) To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

The other amendments on the order paper against which an asterisk mark is placed and which were moved in the last session are also before the House. The clause as well as all the amendments will now be under discussion.

I will ordinarily only request hon. Members, who have not taken part in the debate so far on clause to rise in their seats. If hon. Members who have already spoken want to state any fresh points arising now, I will consider the matter and allow an opportunity, if necessary, later on.

Pandit Malaviya (Uttar Pradesh)**:** Sir, will you allow anybody to move any further amendments to this clause during the course of the discussion ?

Mr. Deputy Speaker : What I find is, normally that is a very difficult affair. It is inconvenient if amendments are allowed to be

moved at later stages, for once again hon. Members will have to apply their minds and ....

Pandit Malaviya : But in view of the special circumstances that exist now...

Mr. Deputy Speaker: Of course, during the course of the discussion, for the purpose of bringing about an agreement or some such thing, an amendment may be moved, and in that case the matter will always be considered. But with respect to new amendments I suppose the House will agree that for the reason that they will throw open the discussion once again, they should not be allowed.

Khawaja Inait Ullah (Bihar)**:** Would not an amendment that goes against the Constitution be out of order ?

Mr. Deputy Speaker : The hon. Member may refer me to the points that are considered as out of order or beyond the scope of the House at the time the matter arises.

Shri M. Naik (Orissa)**:** If an amendment moved stands in the names of two or more Members, will that amendment be taken as having been moved by only one Member or by all the Members who have given notice of it ?

Mr. Deputy Speaker : I shall take it that all of them have moved it.

Shri M. Naik : What happens if the hon. Member who moved it remains absent now ?

Mr. Deputy Speaker : I shall adopt the safer procedure. It is true that more than one Member has given notice of an amendment, and if he is not in his seat, it is open to any other of the hon. Members to move it. The question is, if all the Members are in their seats, whether all of them are to be taken to have moved it. By way of abundant caution we may say that all of them have moved it so that ultimately when there is any question of withdrawing that amendment and the Member who moved it is not in his seat, any of the other Members can withdraw it.

Shri R. K. Chaudhuri: If I want to oppose any of the new amendments now moved when can I do so?

Mr. Deputy Speaker : Whenever he rises and is called upon to speak. He is entitled to speak on all the amendments. (*An hon. Member:* Of one category ?) We have finished all categories. So far as clause 2 is concerned, I have allowed hon. Members to move all the amendments. Tomorrow I shall try to group them for purposes of

convenience according to their substance. The clause may be discussed as also all the amendments and amendments to amendments.

Shri J. R. Kapoor : You may direct the office to circulate to us a consolidated list of all the amendments moved today as also on the previous occasion, so that we may have in a simplified form all the amendments for ready reference.

Mr. Deputy Speaker : Though there are various lists of amendments, what is done is that they are put consecutively and, therefore, no further arrangement is necessary. As regards circulating the amendments moved today, I thought hon. Members would have noted them as I have done.

Dr. Ambedkar : I have also noted them.

Shri J. R. Kapoor : Amendments to the same part of the clause may be at different places and for the sake of convenience it is better they are put in one place.

Mr. Deputy Speaker : I shall ask the office to circulate a list containing the numbers of the amendments moved instead of once again repeating the amendments.

Shri J. R. Kapoor : It should be sub-clause by sub-clause.

Mr. Deputy Speaker : Hon. Members have left their homes far away and come over here for parliamentary work. I do not believe the office should do it. Hon. Members should do it. Hon. Members may take one view and the office may take another view and does the hon. Member also want the Secretary to speak on his behalf in this matter ? As regards Pandit Malaviya's amendment I shall allow it as an exception. With respect to other matters from tomorrow I would insist as a rule that I must have a copy of the amendment as also the Law Minister. Today perhaps hon. Members may not have had sufficient time to think about their amendments. Pandit Malviya may read out his amendment so that we may note it down.

Pandit Malviya : I beg to move : to clause 2, add the proviso :

> "Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to anyone unless a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not be governed by this Act and the same shall then not apply to him."

Shrimati Renuka Ray : Sir, there are two points which I want to raise. It is a dilatory motion. The hon. Speaker has given a ruling during the last session....

Mr. Deputy Speaker : Hon. Members ought not to start off straightway, unless I call them. It may be a valid point…

Shrimati Renuka Ray : It is a point of order.

Mr. Deputy Speaker : May be. The hon. Member should first stand up in her seat and I must call her.

Dr. Ambedkar : It might come under clause 1.

Pandit Malaviya : It is a matter of application and not a matter of extent.

Mr. Deputy Speaker : Let it remain here as it is.

Shrimati Renuka Ray : Sir, there are two points which I want to raise. First of all this amendment which has just been dictated to this Parliament—a procedure which we have never known before—is of a dilatory character...

Pandit Malaviya : Sir, I object to the word dilatory.

Shrimati Renuka Ray : This amendment is of a dilatory nature and the Speaker has given a ruling last time, if you will remember, on this. Secondly, I would like to know whether this procedure of dictating amendments to the House, while the Parliament waits is going to be a precedent which is going to be followed hereafter.

Mr. Deputy Speaker : The hon. Member too well knows that so far as dilatory motions are concerned, it is open to the House to discuss the amendments moved and throw them out, if the House is not inclined to accept them. I am prepared to adopt the advice of the hon. lady Member. I have not considered whether it is appropriate or relevant or irrelevant. I will take time to do so and if at any time before put it to the House. I find it is best to say that it is not relevant and therefore does not arise. I will do so. I will reserve my judgement so far as that is concerned.

As regards dictation, we have been accustomed to taking small sentences but I never expected it to be a long sentence and therefore I submitted myself to his dictation. Let us now go on. Let me place this before the House.

Amendment moved :

To clause 2, add the proviso :

"Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to any one unless

a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not be governed by this Act and the same shall then not apply to him."

Pandit Malaviya : May I make a request ? It is a very serious matter which we are considering....

Mr. Deputy Speaker : The hon. member will have an opportunity...

Pandit Malaviya : I wanted to draw your attention to the fact that unless we are all careful enough to use language with a certain amount of restraint we are likely to waste the time of the House and waste our energy. I should like to take objection, with your permission, to the use of the word dilatoriness for this reason :one Member may have one view, another may have another view. But if we feel that a certain thing should be done and if we wish to say it, the task becomes rather difficult if it is said that we are dilatory. I think we should be careful in this matter.

Mr. Deputy Speaker : I have appealed to hon. members, the same appeal I will repeat: hon. Members ought not to be too sensitive. "Dilatory" is an absolutely parliamentary word. Hon. Members may be anxious to get through this measure. It is not merely throwing any slur on hon. Members—there are some dilatory motions and there are some motions of substance. Therefore, it is quite a parliamentary expression. But I will appeal to all sections of the House. (We are engaged in a very holy cause.) This is a question of Hindu Law and the questions before us relate to marriage and other things. Let us address ourselves with all seriousness to this problem. We can iron out the differences and not only create a meeting place here but also give a lead to the rest of the country which is the intention of Parliament to give so far as this matter is concerned. Therefore, I hope the best of cheer will prevail here and with good humour we will get into the clauses. Though apparently any particular amendment may be unpalatable at the beginning, let us hear and reserve our judgment. That is my humble appeal to all sections in the House. No heat ought to be allowed to enter into this controversy. Let us keep our heads cool.

Shri R. K. Chaudhuri : May I ask your advice, Sir. ....

Dr. Ambedkar : Why do you seek advice so often ?

Shri R. K. Chaudhuri : Just now you were pleased to address Shrimati Renuka Ray as madam. Has any Member got the right to be addressed by the Chair like that ?

Mr. Deputy Speaker : I am sorry. I would like to be corrected. I do not like any Member to be addressed by any other Member in the first person. Similarly I will not address any Member directly. I shall try to be careful, but these things need not be pointed out to me. Now let us proceed. We have had too much of advice.

The Minister of Home Affairs (Shri Rajagopalachari) : I take it, Sir, that in the last amendment the question of order is open ?

Mr. Deputy Speaker : On all amendments. I merely placed that amendment for purposes of discussion. At any time it is open to the House or to me to consider it.

Now, I shall give preference to those gentlemen who have moved the largest number of amendments, and so on in that order, and ultimately to those who have not moved any amendment at all and who want to speak. Those hon. Members who have already spoken on this will get a chance, if necessary, in the end.

Shri Rajagopalachari : May I suggest one thing ? Those who promise and who believe they will make short speeches should be given preference.

Hon. Members : No, no.

Shri Rajagopalachari : And they may give way to others afterwards. If a member who wants to make a long speech is cut out by another we need not sympathise, but it is unfair that those who wish to speak for five minutes should be cut out by long speeches.

Mr. Deputy Speaker : The suggestion that is given is certainly good, but I feel one difficulty. In the matter of resolutions of general discussion on a particular Bill, I can ordinarily give preference to those who want to speak for a short time so that there may be a number of members speaking on it. But with respect to amendments, hon. Members who have not tabled any amendment at all may occupy the time of the House.

Shri Rajagopalachari : Without prejudice to other considerations I am suggesting it. Because, a closure may come at any time and those who may have something very important and brief may be cut out.

Pandit Thakur Das Bhargava : How will we know beforehand whether a Member will make a long speech or a short speech ?

Shri Rajagopalachari : This is a battle of the long and the short.

Mr. Deputy Speaker : We should only have a general indication that all Members will make it, as short as possible.

Khwaja Inait Ullah : I wish to oppose some amendments, which were moved in the last session.

Mr. Deputy-Speaker : Nobody prevents him.

Shri Bharati (Madras) **:** His difficulty seems to be in regard to what you, Sir, have stated that those who have moved amendments will get preference.

Mr. Deputy Speaker : I have not said that I am going to cut it short. All will have an opportunity unless and until the House itself puts a ban upon them. I only indicated that hon. Members who have moved a number of amendments must be given preference. Others may also speak.

***Dr. S. P. Mookerjee** (West Bengal) **:** *rose*—

Mr. Deputy-Speaker : Dr. Mookerjee—though he has not tabled any amendments.

Dr. S. P. Mookerjee : I happen to be one of those Members. . .

Shri Rajagopalachari : It goes against all rules. .

Dr. S. P. Mookerjee : ……who have not tabled any amendment, nor have I, Sir, spoken on this momentous measure at any time since the Bill was introduced.

Shri Naziruddin Ahmad : He was a Minister at the time.

Dr. S. P. Mookerjee : Sir, we have met here after about seven months to take up consideration of the Hindu Code Bill. Many things have happened during this period. If I may say so, it is a matter of some satisfaction that Government has kept its mind open and has volunteered to make amendments in order to meet criticisms which may be made either in this House or outside.

Shri Gadgil : Reasonable.

Dr. S. P. Mookerjee : I believe never in the history of our country has a measure given rise to so much criticism in support or against it.

Shrimati Renuka Ray : What about the abolition of *sati ?*

Mr. Deputy Speaker : No, hon. Member need interrupt another hon. Member. I already said that it is likely to generate heat. Whatever is not to the taste of any hon. Member ought not to be imposed upon any other hon. Member.

Dr. S. P. Mookerjee : The clause we are discussing now is of a general character. It raises the question of the applicability of the entire Code and from that point of view I should like to make some general observations which will be of a relevant character.

*P.D., Vol. XV, Part II, 17th September 1951, pp. 2705-23.

The question has arisen as to whether this Code should be made applicable to Hindus as such or to such other classes of persons including Sikhs, Jains and Buddhists as have been mentioned in the amendment moved by the Hon. Law Minister. The question has also been raised whether the Code should not apply to all citizens of India. I know that this matter was raised on the floor of this House in February last and 'I do not wish to dilate upon it very much but I would certainly say that as the Chapter in the Constitution dealing with the directive policy of the State indicates, Parliament under the new Constitution has really been called upon to pass a Code which is to be applied to all citizens—an all India Civil Code. When this bill was started to be discussed, we were working under a different set of circumstances altogether. It is therefore a matter of regret that the new Government even after the Constitution has been passed should proceed with a measure of this description applicable only to one section of the community. It is said that we are a secular State. In fact we suffer very often from a new disease which may be called 'secularities'. How far is it open to Parliament—I am not raising any technical point—but how far is it desirable for Parliament to pass a law which will be applicable to only one section of the community ? I know what the reply of the law Minister is, because he dealt with this question in one of his previous speeches. He said that there was no difficulty in formulating an all India Civil Code if the country really wanted it. If that is the answer, then why not let us have such a Code ? I doubt very much if some of the provisions which have been suggested in this Code can be proposed to be made applicable to other communities, in particular to Muslims. We are discussing the question of monogamy, I believe it is nobody's case that monogamy is good for Hindus alone or for Buddhists alone or for Sikhs alone. I believe those who are advocating monogamy honestly feel that this system is sound in principle and it should be made applicable to all—if not to all persons in this civilised world, at least to all citizens in India who are liable to be governed under laws passed by this Parliament. Now, why not have a separate Bill dealing only with monogamy and make it applicable to all citizens ? What is the objection thereto ? The objection thereto may come from quarters to which the Law Minister pointed his finger, I believe Mr. Naziruddin Ahmad.

Shri Naziruddin Ahmad : I am sufficiently troubled with one wife. I do not want two.

Dr. S. P. Mookerjee : The law Minister has got his answer. In any case, if a bill dealing with monogamy is introduced...

Pandit Thakur Das Bhargava : A Bill to that effect has been introduced in this House by me.

Dr. S. P. Mookerjee : If such a Bill is introduced, at least the Law Minister will get support from Mr. Naziruddin Ahmad, but the real reason is that Government dare not touch the Muslim community.

Shri Bharati : Why ?

Dr. S. P. Mookerjee : You make a test.

Shri Gadgil : Wait and see.

Dr. S. P. Mookerjee : I am making a suggestion. Let the Law Minister declare that the Bill will be amended and the portion dealing with monogamy will be applied to Muslims.

Shri Rajagopalachari : Are we to make laws in order to test courage ?

Dr. S. P. Mookerjee : Laws are sometimes made to test the sincerity of individuals and Government and therefore the sincerity and the partiality of the Government including the Home Minister are very much in question today.

Shri Bharati : Not at all.

Dr. Ambedkar : No, no.

Dr. S. P. Mookerjee : I am not going to tread on this question because I know the weaknesses of the promoters of the Bill. They dare not touch the Muslim community. There will be so much opposition coming not from men like Mr. Naziruddin Ahmad but from many others throughout India that Government will not dare to proceed with it. But of course you can proceed with the Hindu community in any way you like and whatever the consequences may be.

Shri Rajagopalachari : Because we are the community.

Dr. S. P. Mookerjee : My appeal to the House and to the Government would be on a somewhat different basis. I do not wish to make my speech very controversial.

Shri Kamath : Why not ? Make it as controversial as you can.

Dr. S. P. Mookerjee : Because I want to create that atmosphere where matters affecting social reform can be discussed in a method of give and take. It is not a Press Bill which the Law Minister is sponsoring on behalf of the Home Minister. We do not want the Police to stand outside this Parliament to help the smooth passage of a Bill dealing with social reform. That does not really help anybody. Any Bill whose object

is to introduce social reform must have the support of the vast majority of the people of the country. I see the Home Minister rising.

Shri Rajagopalachari : I am not interrupting, I am only helping him. My interruption has given a twist to the hon. Member's argument. I was only objecting to the particular argument. I may be entirely in agreement if he proceeds on the other basis.

An Hon. Member : So, you are a supporter !

Dr. S. P. Mookerjee : As the time of retirement from his office is drawing nearer and nearer sense also is dawning upon the Home Minister quicker and quicker. In any case, if we want to have social reforms in this country, we would like to carry as large sections of the people with us as possible.

I do not share this view that parliament has no right to deal with matters of social reform. I know the sacredness of our ancient texts—*Vedas, Smritis* and *Srutis*. But historically there were commentators to interpret the great theories which are propounded by the original lawmakers in days of yore. Gradually, the commentators also disappeared and what we have witnessed during the last 150 years is that in many matters affecting social reform Judges including European Judges sitting in distant London and legislators have from time to time come forward and made alterations in the social structure of the country. So it is rather too late in the day for any one of us to say that Parliament should not now have the right to pass legislation which may interfere with the rights and privileges which may be enjoyed by the people of this country under the existing law.

Pandit Maitra : Not this Parliament as constituted at present.

Dr. S. P. Mookerjee : So far as the right of this Parliament is concerned, naturally it is a very delicate matter. For me being a Member of this body it is rather difficult to challenge its jurisdiction, but of course so far as its right to present the will of the people goes, that is a matter which will be decided in the next few months and the people themselves will give their verdict. It is no use either for us sitting on this side or Members of Government sitting on the other side claiming for this Parliament things which may not be actually, honestly and legitimately claimed for this body. But my point is this that today there is a volume of opinion—a strong body of opinion, against some or many of the fundamental features of this Bill. I beg of hon. Members who are supporting this Bill to appreciate the depth of these criticisms. There may be some features in this Bill with which I am in agreement, but

I am trying to look at this measure from the point of view of those who are opposing it either in whole or in part. Just as we may appreciate the depth of the feelings of those who are supporting this measure, so also the depth of feelings of those who are opposing it must be appreciated. How to find a solution ? From the papers we find that for strategic reasons it has been decided to omit the consideration of some portions of this Bill.

Dr. Ambedkar : Strategic reasons ?

Dr. S. P. Mookerjee : A sort of toss is supposed to have been taken. On the one side are marriage and divorce and on the other side is property and somehow marriage and divorce have won the day, and property has been relegated to the background for the time being.

An Hon. Member : Property has won the day.

Dr. S. P. Mookerjee : Is it possible for us on the consideration of the amendments which are now before the House under clause 2 to devise some procedure whereby it may be left open to those who desire to come under the Code to take the fullest advantage of its provisions, and at the same time give freedom to those who do not believe in the sanctity or legality or justice of the provisions to continue to be governed by existing Hindu Law ?

Shri Bharati : That is uniformity.

Dr. S. P. Mookerjee : That is a proposal which I am making in a perfectly relevant manner on the basis of the various amendments which you have ordered to be placed before the House for consideration.

I have been told by some friends that we are liable to criticism for our backwardness in many foreign countries. During the last few days I have been told that some people have come and said that in China they are watching when the Hindu Code Bill will be passed !

Pandit Maitra : In Honolulu too !

Dr. S. P. Mookerjee : In America some people are supposed to be watching as regards the progressive nature of the Indian people in relation to their attitude towards the Hindu Code.

Shri Gadgil : Old *rishis* are watching from Heaven also.

Dr. S. P. Mookerjee : That I consider to be an entirely irrelevant consideration. Let us look at the American laws. I was trying to get some information with regard to the American laws. I find that in 26 different States in America they do not allow marriage between

Americans and Negroes and even they go to the length of indicating the fraction of African blood which will negative any marriage between an American and Negro. In some States marriage between an American and Chinese is prohibited, or a marriage between an American and a Mongolian. In practically all the States there are different marriage laws. Somebody interrupted me just now—what about uniformity ? I suppose people of the United States of America are getting on quite merrily and quite well without having complete uniformity of all marriage laws. So uniformity is not the last word on the subject. Uniformity suggests stagnation, deadness...

Shrimati Renuka Ray : *rose*—

Dr. S. P. Mookerjee : .....and I suppose even Mrs. Renuka Ray has not reached that stage.

Shrimati Renuka Ray : Should we follow America ?

Dr. S. P. Mookerjee : I am not saying that you should follow America. I would suggest that we should follow the lead given by our own country and that is the lead which Mrs. Ray should follow and which she has not followed as yet.

That is so with regard to America. Now take again the Roman Catholics. According to their strict law, according to their religion, divorce is not allowed. But in almost all countries they have passed civil laws which allow Roman Catholics to adopt divorce if necessary. But they have not touched their religion. They have allowed that to remain separate, but those among the Roman Catholics who desire to be governed in accordance with the civil laws, it is open to them to do so. Well, Dr. Ambedkar is nodding his head. It is difficult to know whether it is in approval or dissent. In any event, he can explain later on—I am open to correction. It is very difficult to get these Jaws. But whatever books are available in the Parliament Library I was trying to go through them and I find that a clear distinction is made between the two systems.

Now we are confining ourselves for the present to marriage and divorce. What is it that is worrying the so-called progressives in this country, including progressive ladies?

Shri Kamath : In the House or outside ?

Dr. S. P. Mookerjee : They are anxious that there should be a provision for divorce and there should be provision for monogamy. These are the two things on which great stress has been laid. Now let

us take divorce for the time being. You have got your laws passed by the Indian Legislature which permit divorce. At one stage a Hindu could not get married under the civil law, unless he declared that he was not a Hindu. Even that has been changed. A Hindu may remain a Hindu and at the same time contract a marriage which will be according to his taste or that of the couple. Similarly, with regard to inter-caste marriage, you have already passed laws and made such inter-caste marriages permissible, without taking away the Hindu character of the persons involved. Even *sagotra* marriage which is considered to be very revolting by large sections of the people has been recognised by laws passed by Parliament.

Dr. Tek Chand : By the previous Parliament.

Dr. S. P. Mookerjee : By the Legislative Assembly.

These are indications as to how the demand for a progressive development—if I may say so—of marriage laws has been mat by Legislatures of this country. This is a subject which is placed in our Constitution in the Concurrent List and I believe Bombay and Madras have passed laws on the subject. (*An Hon. Member* : Mysore as well). There are several States where provincial laws have been passed in some form or another. (*An Hon. Member* : Not in North India) making provisions which are consistent with the wishes of the people. Now the point is this. Why do you wish to make the new laws obligatory upon all Hindus ? You do not wish that the system of divorce should be taken advantage of or must be taken advantage of, by people against the will of the parties concerned. It is an enabling measure and that power is already in existence.

On the other hand, what is the blow that you are giving at the feelings of million of people ? Now you have kept this form of sacramental marriage on paper. You have changed its description from sacramental to *"dharmic"* in order to give it a little oriental and attractive colouring. Of course the substance has not changed. I would ask very seriously those Members of the House who are supporting this Bill : What is it that you are achieving by this proposal ?

So far as sacramental marriage goes, this is an ideology which lies deep-rooted in the minds of millions of people—educated, and uneducated, literate and illiterate—the indissoluble nature of Hindu marriage. That is a matter of religion : it is not a matter of mere body and flesh. Now that is a feeling which lies deep in the minds of millions of people and I have talked to many people not only in my own province

but in verious parts of India. People who have not the remotest chance of taking advantage of any divorce law for various reasons are simply shocked at this idea and many people who are well-intentioned, who are reformers suggest that if there are Hindus in the country today who want to take advantage of the modern system of divorce or want to do away with the religious nature of Hindu marriage, there is enough opportunity given to them under the existing law. If, however, the law has to be revised in order to make them ultra-modern and completely up-to-date, let the law be revised for their benefit. But why do away with the fundamental and sacred nature of Hindu marriage ? What is it that you gain thereby ? I have not been able to get any satisfactory answer to this question. Because it is nobody's case that the new methods which are being laid down will be compulsorily adopted by all Hindus. Obviously that is nobody's case. Therefore, if option is given and if people take advantage of that option, naturally your case is won.

I was told that even in India, as India is today, there are nearly about 90 per cent, among *Shudras* amongst whom some form or other of divorce or dissolution of marriage exists. Very well, then the answer is there. You have got your Hindu Law which provides for the dissolution of marriage in castes and communities where it is wanted. You may say, well, why should about 10 or 15 per cent, of the Indian population stand against these changes ? It is not a question of anybody's standing against the changes. If you want to go ahead or go backwards— whatever it may be—you are welcome to do so. But why drag others who do not believe in you and also who believe in something which is perfectly morally justifiable and in accordance with the highest standards of human conduct ? I have not been able to get any answer to this fundamental question.

We are told very often that our system is backward. I have got with me many extracts from the writings of great Indians and great Western scholars who have admired at the way in which Hindu society has carried on its existence in spite of tremendous odds and difficulties. I am not for a moment saying that all is well with Hindu society. I know where the defects lie. But it is something amazing, something unprecedented that our religion or the great truths on which Hindus for generations past, for thousands of years, have lived, somehow have shown a degree of adaptability and vitality which is hardly to be witnessed anywhere else. What is the reason ? The reason is that whatever truths were propounded by the ancient sages or *rishis,* or

commented upon by those who came after them, were not dogmatic in character. Just as the needs of the society changed, so also the laws were altered. In a huge country like India which is one politically today—and we would undoubtedly like to see that it grows politically, socially, culturally and economically as one solid nation—at the same time, we cannot forget that in this country dwell thousands and thousands of people in various parts, in towns and in villages, men educated, uneducated, men with vision and with no vision and they have built up a structure of their own consistent with individual and social progress and welfare. Somehow that society has developed. Do you find any other country in this world where in spite of tremendous onslaughts the social structure has remained one ?

India passed through seven hundred years of Muslim rule. Now, many theories were propounded during that period which in the context of today's circumstances may appear to be rather conservative. But they were dictated by considerations for the preservation and consolidation of the society as such, and that is how those particular principles were propounded by the masters who were in no circumstance less qualified to speak on matters with which they dealt than any of us sitting in this Parliament today.

From time to time movements came into this country. Reference has been made to Brahmo Samaj to Arya Samaj as soon as it appeared that the society was becoming stagnant, was becoming conservative, some outstanding personality raised his head in this land and drew upon the great sources, the fountain head of Indian knowledge, the *Vedas* or the *Upanishads,* gave their own interpretation and thereby tried to check the growth of the evils of conservatism or the moral decay of the society. But what has happened today ? The ideology for which the Brahmo Samaj stood in this country, say, about a hundred years ago has practically been absorbed by the Hindu society as you call the Hindu society today.

The other day we were discussing about Buddhism, a matter on which Dr. Ambedkar naturally would be the best authority to speak in view of his latest transformation to that religion. But in any case some friends from outside India came, I have something to do with the Maha Bodhi Society. I happen to be its President. *(An Hon. Member*: Are you a Buddhist ?) without being a Buddhist. I am a Hindu and yet I am its President, because I have liberality enough to admit the greatness of Buddhism and yet remain a Hindu. The point I was about to develop

was this. There were friends who came from outside India and they asked with a tone of complaint. "Well, India was the land of birth of Buddha, but India killed Buddhism". I do not wish to go into those controversial matters now. But one point comes out very prominently and that is that when Buddha started preaching his great doctrines India needed Buddha, not only to save the world but to save India. And Buddha succeeded in checking the growth of certain tendencies which were about to destroy the very life-blood of Hindu civilization Buddha has been absorbed by the same Hindus as an *avtar*. Although there were people in India who fought with Buddhism—whether they were right or wrong is a matter into which I need not enter now—but gradually it was realized that Buddhism was a factor of growth on Indian soil and had to be absorbed in Indian culture.

Shri Gadgil : The same thing will happen to the Code.

Dr. S. P. Mookerjee : Far from it. That is a paradise that my friend is creating where he may dwell for ever.

So far as Buddhism is concerned it went and spread in other countries but the tenets of Buddhism were gradually absorbed in Hindu ideology .The reason why I am saying all this is to show that we should never tolerate any criticism from any quarter, especially from a foreign quarter when they say that Hindu civilization or Hindu culture has been of a static nature or of a stagnant nature or of a decadent nature. There is something in our culture and civilization which is of a dynamic character and which has lived from generation to generation. Even when India was a subject nation people were bom in this country, men of our soil, who stood up for great ideals which gave a new lease of life under new and modern conditions to the eternal tenets of Hindu civilization. This code is destroying that fountain-source. I shudder to think of the effect of cause 4. You read clause 4 of the Hindu Code. You are closing the door there. You are saying that except such manners or customs which might have been recognized in the body of this Code, everything else will be taboo from today. And my friend Mr. Gadgil says that this will be another Code of a modern Buddha or Manu or something like that (*An Hon. Member:* What a fall !) It is these manners and customs based upon the ancient ideology, which allowed the Hindu society to grow and prosper from time to time.

12 NOON

Today, this great Assembly—and all of us are honourable and learned men—is solemnly deciding that we are the: fountain-head of Indian

religion and Indian culture and whatever we decide to embody in this Code is final for the time being and nothing else will be allowed to be looked into by Judges and Courts. Does not the House know that even in 1951 after the attainment of Independence, our own Supreme Court had to draw from the original texts or their interpretations and give their verdict on cases where questions of Hindu law were under consideration, because they could not get any analogy from judicial decisions or text-books ? You are killing today the very fountain source of your religion which had given such a wide scope to generations of people to make it a living reality and you say that it is a forward measure : it is a backward measure ; it is a measure which does not help anybody at all ; it only helps in dividing the country. I do not wish to ascribe any motive to anybody. Anyone who may be supporting it or proposing it may be acting with the highest motives. I am prepared to admit that but what I would like to say is this : Do not give compulsory effect to the provisions in respect of all people. (*An Hon. Member* : Where is the compulsory effect at all ?) Divorce is not compulsory but the breaking away of the sacramental ties of Hindu marriage will be compulsory and that is bad enough. Whether divorce comes or not is a different question altogether ; you are violently changing customs and convictions. Somebody said, when I was speaking earlier that south India was specially progressive and many of the laws which we are considering are already in existence there today. I say good luck to south India. Let south India proceed from progress to progress from divorce to divorce. I have absolutely no quarrel with south India, but why force it on others who do not want it. In fact I have got a letter with me. I received it only two days ago—it is a postcard and I do not know the gentleman who wrote it.

Shri Gadgil : From the Dead Letter Office ?

Dr. S. P. Mookerjee : It is not from the Dead Letter Office. I can make a present of it to Mr. Gadgil, if he likes. It is not a dead letter. This only shows how customs vary in this country. Here is this gentleman who writes from Nuzwid, Kistna district.

> "The Bill as published on the Hindu Law contains a provision rendering the marriages between a girl and her maternal uncle void as being within the prohibited degree. The aforesaid custom is widely prevalent in Andhra and Tamil Nad and even Brahmins consider maternal uncles of girls to be the most eligible and suitable bridegrooms for their girls. The prohibition is not known perhaps

to lawyers and to others. I am sure that the vast majority of our people are ignorant of it, in which case marriages celebrated in ignorance of this provision would operate as a severe hardship. I therefore request you to move an amendment....."

I do not know why they had selected me in particular and not written to Dr. Ambedkar—

"... saving the custom from the prohibition or fixing suficient time to elapse before the chapter on marriage, can be brought into force."

This is just by the way, for those who were talking about the progressive nature of the people living in those territories. Naturally they have gone very far ahead. (*An hon. Member*: Is it true ?) I do not know whether the letter came from the Dead Letter Office but my friends from south India can tell me whether it is genuine (*Interruption*). I shall refer the writer to Mr. Bharati in my reply. The point which I am developing is this.

Shri J. R. Kapoor : It is not a progressive State.

Dr. S. P. Mookerjee : Those who may follow him may consider it absolutely progressive. It is only a point of view. I am not challenging the wisdom or un wisdom of any State. It might have been followed by lakhs and millions of people in this vast country. Naturally customs might have developed in a particular manner. My proposal boils down to this. You do not make this Code applicable to all—I am talking of marriage and divorce for the time being—but leave it open to those who will be married in future to make a declaration that they would like to be governed by these provisions and not be governed by the consequences of *dharmic* marriage ; you leave it open to them to do so. (*An hon. Member* : What about past marriages ?) That covers the cases of those who come in future. We are not legislating. I suppose for the purpose of helping the dissolution of marriage of the existing Members of Parliament. We are looking to the future ; we are thinknig of handing over something to the future generation, whereby they can live in peace and with greater comfort. But supposing you want to apply it to those who are already married....

Dr. Ambedkar : It does not apply to those who are already married.

Dr. S. P. Mookerjee : There also you can make a provision. Supposing you want to apply it to all who are already married, there I will give a solution. You leave it open to anybody, say, within a period

of one or two years to register his decision whether he would like to be governed by this Code to opt for it, if you can use that language. (*An hon. Member* : Why not everywhere ?) Well, 'everywhere 'I do not approve for this reason that you are deciding something for others for which you have no right today. You are passing a law whereby you are saying that the *dharmic* form of marriage will continue as now without any modification or alteration and the other form of marriage also is open to people who would like to take advantage of it. Let the people in future make their choice. There is no compulsion and for existing people you may give a time-limit or you may not give a time-limit. You can say that if any particular party desires to be governed by the provisions of this Code, such persons may make a declaration before the Registrar or Registrar-General or Director General or whoever he may be and get the relief as is provided for in the Code. I ask in all seriousness what is it that you lose thereby ?

Pandit Kunzru (Uttar Pradesh)**:** What do we gain thereby ?

Dr. S. P. Mookerjee : What you gain thereby is that you do not break the unity of the country.

Pandit Kunzru : This Act when passed will be permissive. It does not compel any couple to take advantage of the provisions of divorce. It is perpetually open to a couple to say whether they are to be governed by that provision or not.

Dr. S. P. Mookerjee : That is a point of view which maybe urged with some emphasis. Here the difference is this : that you destroy the indissoluble nature of Hindu marriage which is regarded as solemn and sacred by millions of people. Pandit Kunzru may not agree and many people in this House may not. I am not quarrelling with those people who believe that marriage is bilateral arrangement, that it is nothing but a matter of contract; I have nothing to say against them if there are people who hold that view. Let them hold it, but there are those who hold the contrary view, who genuinely and sincerely believe that this system which has been in vouge for thousands of years is something sacred, something deep-rooted in their traditions and religion. What right have you to sit in this House and say that you want by one stroke of the pen to take this great right away ? That is my answer to Pandit Kunzru. (*Shri Bharati*: Monogamy.) I am coming to it. Shri Bharati need not be anxious I hope he is agreeing with me as regards divorce and that is why he wants me to go to monogamy. That is my line of approach. Believe me, rightly or wrongly, this country has been divided

tremendously on this Hindu Code Bill. I do not wish that that should be so. I want that we should go on progressing and making reforms in our social structure. But, we will do it in such a way that we can carry the bulk of the people with us, not carry them by force in this House or carry them by threads of sweeping agitation outside, but carry them by appealing to their logic and to their conviction. When I discussed this matter with representatives of the orthodox school of view.....

Dr. Ambedkar : That is Karapatriji.

Dr. S. P. Mookerjee : No ; I have not met him recently.

Pandit Maitra : What is the harm if he is consulted ?

Dr. Ambedkar : No harm. I invited him and he expressed a desire to come. Afterwards, he refused to come. I have not shunned him.

Dr. S. P. Mookerjee : I have not discussed this matter with Karapatriji rcently. I shall not be sorry to discuss it with him ; but, I have not discussed.

Dr. Ambedkar : In fact; I invited him to come and discuss ; but he has not come.

Dr. S. P. Mookerjee : I have discussed this matter with many people who represent his point of view and others who are not orthodox. Somehow, the country is divided today. How to proceed in the matter ? As I said, it is not a Press law, that something is in danger and so you must go and pass the Press law somehow and operate it. This is not an amendment of the Constitution. It is not a political matter. In fact, we may differ on matters of politics. But, there should be a fundamental agreement with regard to the need for introducing reforms into our great country, which will make our civilisation more progressive and more advanced. That should be our common ground of approach. Those who are following the existing practices, those who are abiding by the ; provisions of the existing laws are not retrograde. The tragedy is that many of the supporters of the Bill, who have been carried away by their notions of so-called progress and advance, in their exuberance think that what they think is the last word on the subject, that they represent progress and the others are retrograde. That is very unfortunate. (*An Hon. Member* : Lipstick). I am not talking about lipstick at all; I have talked about progress. We should see the other man's point of view, the point of view of man who believe in the existing ideology, unless it can be pointed out that something is happening in the society which

is absolutely rotten, immoral, backward. If that could be pointed out. I am at one with Dr. Ambedkar and those who want to introduce reforms. But, if it is a mere difference of opinion, a mere difference in outlook, and you get whatever you want for those who share your point of view, why then do your force your opinions on millions of others, who do not share your view ? That is a point of view which I would very strongly urge before the Law Minister and Governmet. If I had given you a formula which indicated an abandonment of the provisions of the Code for those who believe in it, you can blame me. But, I wish you godspeed ; go ahead ; do whatever you like for those people who believe in the ideology which you are preaching here. But in respect of others who and whose forefathers had proceeded in accordance with the old traditions and Who are no less patriotic Indians than any one who is sponsoring this bill, why do you force your options on them ?

Talking of divorce has the law of divorce solved all social problems in countries where the system of divorce is now in existence ?

Shri Himatsingka (West Bengal) **:** Created more.

Dr. S. P. Mookerjee : I have been going through some of the recent bookson sociology. People are perturbed, because this is a complex human problem. The word has not found a solution to these problems. Those who have taken to the system of divorce, their number is leaping up. Do they find peace ? Have they found happiness ?

An Hon. Members : No.

Dr. S. P. Mookerjee : On the other hand new problems have come up. Read some of the latest books on psycho-analysis. There it is clearly pointed out that many of the evils which face the western countries are due to the mal-adjustment of the sexes. These are complex problems. Why blindly copy something from the west because some people from some part of the world have come and told you that. You are backward unless you adopt this ? If there are forward people in this country, who believe in this ideology, give them a long rope, sufficiently long, so that they may hang themselves. But, do not interfere with others who have found a solution of their problems through different doors altogether.

So far as monogamy is concerned. I shall support it with one reservation. Make it applicable to all the citizens of India. It is not a question that monogamy is good for the Hindus and monogamy is not good for others. Stand for one social doctrine.

Pandit Thakur Das Bhargava : Why force it on those who do not believe in it ?

Dr. S. P. Mookerjee : If you believe that monogamy as a social system is the best that India should have, then, do not try to look at it through the Hindu door ; look at it through the human door and make it applicable to all. Behave like a secular State at least in this instance. Take courage in both hands and say that monogamy will be made applicable to all citizens of India. If you cannot do it, do not do it for one section alone. Here, we are living in days of statistics. We swear by stastics, either real or manufactured. I have been trying to get some information : I could not. I wanted to know how many people in India have been marrying a second time.

Shri Himatsingka : Or, keeping two wives at the same time.

Dr. S. P. Mookerjee : That is what I mean : marrying a second wife when the first is alive. The number is extremely small. It is really no problem. Already, on account of advanced views, society has adjusted itself and on account of economic conditions, general public censure etc., this system has gone out. Why make a parade of this that you are introducing a great reform and legislating for this ? If you accept it as a principle, apply it, as I said just now to the whole of India.

So far as the Hindu Code Bill is concerned. I do not know what the decision is going to be. The Prime Minister has indicated that most likely we will not proceed with the rest of the Bill and time may not permit us to do so I am prepared to make this offer. Pass the entire Hindu Code as it is ; only make it optional. Those who want it can adopt it. I have spoken to representatives belonging to the extreme orthodox school of view ; I have argued with them. Although there are some amongst them who are against the passing of any such Bill whatsoever they also realise that just as they claim to think for themselves, others also must have the liberty to do so for themselves and for their future. That would be a splendid beginning. I am prepared to admit, however much there may be opposition to the Code, that this represents a marvellous piece of work on the part of Dr. Ambedkar and those who have been associated with him. I am quite prepared to admit that this is a most throny subject - and he has gone through the matter with as much ability as any one could have. For that, if he is prepared to accept an honorary degree to be conferred by Parliament, we are prepared to confer a degree on Dr. Ambedkar. But if you look upon it as a measure which has to be pushed down the throat of millions of Hindus who are opposed to it. I say that

you will not be doing a service to the people of India. The only way in which you can proceed even at this late stage is this. Let us not quarrel amongst ourselves ; let us agree to differ on this fundamental issue. If you are prepared to point out that there are certain matters which are immediately anti-social, or corroding into the very life of Hindu society, let us agree to make such provisions compulsory if there are any. Othewise, this new great structure which you have prepared, keep it there for a few years and say that any one, whether a Hindu or not, any Indian citizen, who desires to accept it can make a declaration, and the provisions regarding marriage or divorce or property, whatever it is, will be applicable to such selectors. That would be the beginning of a great era. For after all, who is going to decide ultimately ? your elections are coming. You then go forward. As the Prime Minister has said, his sweeping wind will come and blow away all opponents and....

Shri Kamath: Whirlwind.

Dr. S. P. Mookerjee : Yes, the whirlwind will come. Let the whirlwind come with regard to the provisions of the Hindu Code Bill. Let them go and convince the people and tell them that they are not forcing it on them. Let them say, "we give you the option. Here is a heaven we have created. Come into this heaven and attain *moksha*". Go and explain to the people and if they feel that it is really such a heaven and not a *dilli-ka-laddu* they will come and take it, and take it with open hearts. There will be ample time. After all, Hindu civilisation has existed for thousands of years, in spite of on slaughts from various quarters, cultural, political and economic invasions and so on. We have survived all that and we are now a free country, and we propose to survive with a much more glorious future than we had attained in the past. But when you introduce social reforms in such a vast country as this, where opinions differ, where attitudes differ and where ideologies differ, then the only way in which you can do it is to go at a slow pace. I am not asking you to abandon principles which you believe to be true. I am not asking that for the time being. But please go and convince the people, the Hindu people who still claim to live under canons and codes which are in no way inferior to those existing in any other part of the world. Give them scope to choose for themselves. That is my appeal to the House and to Government and I hope that appeal will be heeded to.

***Shri B. K. P. Sinha :** A cruel destiny always pits me against Dr. Mookerjee, one of the greatest orators in the House and in the country. Dr. Mookerjee and other opponents of this Bill have brought forward the suggestion. "Why not have a Civil Code ? Why not extend the scope of this Bill to cover all the castes and communities and religious groups in India ?" And also they ask., "Why not leave it to the different states or different people to adopt the various provisions of this Bill ?" The mover of the Bill has effectively replied to these criticisms. The opponents of the Bill have also referred to the clause in the Constitution regarding discrimination between different persons. It was their contention that in view of that clause, or in view of that arricle of the Constitution. If you have provisions in the Bill applicable only to one community, that will not be constitutionally valid. In that connection they also referred to certain decisions of some Bombay courts and Madras courts. But they were decisions of the lower courts and since then the Bombay High Court has pronounced that in the cases referred to there was no violation of the discrimination article in the Constitution and that in spite of that article we can have laws for the Hindu community, to the exclusion of other communities. Therefore, that point is settled.

Then there is the question of leaving it to the different States or people to decide by referendum. What are the grounds on which they have advanced this argument ? They say that the provisions of the Bill conflict with the fundamental tenets of Hindu law, that they are revolutionary and that they bring about far-reaching changes in the law, and that these changes are not at all essential. These are the arguments advanced by them in support of their contention. Let me scan the provisions of the Bill and see what is the substance of their contention. I will for the present confine myself to the question of marriage and divorce, for that is the only chapter that is going to be discussed.

Pandit M. B. Bhargava (Ajmer)**:** Kindly confine yourself to clause 2.

Shri B. K. P. Sinha : Yes. I confine myself to clause 2 and I will illustrate my statements only from marriage and divorce chapter. I will not go beyond that. What are the features of this chapter ? It has four features. One that it widens the scope within which one can have marriages. You can go beyond the particular sub-caste or group and

*P.D., Vol. XV, Part II, 17th September 1951, pp 2723-32.

still the marriage will not be illegal and the children will not be illegitimate. Secondly, this Bill restricts or narrows down the field of prohibition. There were many prohibitions. One could not go beyond certain castes. One could not have marriage within the same *gotra* or *pravara* and with certain relations which fell within certain degrees from the father and mother. This bill narrows these prohibitions. And then it introduces the principle of monogamy, and lastly it introduces the principle of divorce.

First of all, there is this widening of the Field of marriage. Are the provisions of this measure really in conflict with the principles of Hindu Law and Hindu religion ? In my opinion they are not. Dr. Mookerjee said that this measure offends the orthodox people, that it offends their religious sentiments, their religious susceptibilities. I am not ashamed to admit that I consider myself as much an orthodox Hindu as anyone else. Have I not very often met Dr. Mookerjee on the banks of the Ganges when we went there for our bath. We have also often met in the temple of Lord Shiva at Banaras. Our orthodoxy is of the same character and of the same extent. Still I do not find anything in this Bill that wounds my religious feelings or susceptibilities. What was the pristine or original condition of Hindu society ? That we see in the texts of the *Mahabharata* and other scriptures. There were no caste distinctions then as they exist now. Then there were divisions according to the work.

Shri Syamnandan Sahaya : Every man is a *Shudra* by birth. It is by the sacraments that he becomes a Brahmin.

Shri B. K. P. Sinha : But due to certain adverse factors things changed. Well, I do not want to quote and prolong the discussion, otherwise I will be playing your game. Well, as I was saying, there were no distinctions as they exist now. Every *Arya* was free to marry any other *Arya*. You know that *Anuloma* and *Pratiloma* marriages were permitted by Hindu law. And in adopting the provisions of this measure. I am sure that we are reverting to the old order of things. But that old order was disturbed by certain unfortunate developments in the country.

Pandit Malaviya : Will the hon. Member please elaborate that point a bit ?

Shri B. K. P. Sinha : I have elaborated it sufficiently. We will have to talk for seven days if we are to give enough elaborations.

Pandit Malaviya : I want to learn. I want to understand things and what the hon. Member says. I want to know where *Pratiloma* marriages were allowed in India.

Shri B. K. P. Sinha : You will find in any book on Hindu Laws that *Anuloma* and *Pratiloma* marriges were common.

Mr. Deputy Speaker : *Anuloma* marriages were allowed and not *Pratiloma* marriages.

Shri B. K. P. Sinha : It was not allowed. The children were known as *chandalas* but they formed a branch of the Hindu society.

Mr. Deputy Speaker : All that has been settled by Acts of Parliament.

Shri B. K. P. Sinha : There are so many Acts of Parliament in this regard such as the Special Marriage Act of 1872, the Hindu Marriage Validation Act of 1949 allowing marriages between Hindus, Sikhs and Jains and also between different castes and sub-castes then there is the Hindu Marriage (Removal of Disabilities) Act which allows marriage between sub-divisions of the same caste. So these Acts are there and they are of an all-India character and it is open to any Hindu to marry any other Hindu, Sikh or Jain. What we are doing here is simply re-enacting the old laws. Dr. Mookerjee asked if the laws are there, why re-enact them here ? I would put it to him that if they are there what crime are we committing by re-enacting them in the Hindu Code ?

Then I come to the second feature; restricting or narrowing the field of prohibition. Under the Hindu Marriage (Removal of Disabilities) Act, is it not true that *Sagotra* and *Sapravara* marriages are permitted and that nothing new is introduced in this Code ? This provision is already a part of the Hindu law. In the Hindu society it was only amongst the Brahmins, strictly speaking, that *Sagotra* marriage was taboo. To the *Kshatrias* and *Vaishyas Gotra* had a spiritual or religious significance only. *Gotra* did not mean to them that they were descended from the same ancestor. Only in the case of the Brahmins the sameness of *Gotra* meant that they were descended from the same ancestor. In the case of the *Shudras Sagotra* marriage was always permitted. Whether under the law as it was or as it is, we find that *Sagotra* marriages were legal and valid and that is only being incorporated in this Code.

Another restriction introduced is that the field of prohibition is being narrowed, in the case of the father's side to five and in the case of the mother's side to three generations. So far as the Hindu law and the practice and customs prevalent in this country are concerned there is

not much of a uniformity. Many commentators advocated seven and five prohibitions : others have advocated five and three prohibitions. They thought it was not necessary to go beyond five and three prohibitions. In the *Yajur Veda* the restriction is three and two and in certain Vedic texts it does not go beyond two. In this Bill it is my contention that we are only reverting to the old order, the Hindu law as it was in the beginning before it became contaminated with contact with others.

(SHRI HIMATSINGKA in the *Chair)*

As regards the principle of monogamy, under the Hindu law as practised today the Hindu woman shall have only one spouse.

Shri Kamath : One living spouse.

Shri B. K. P. Sniha : Living, or dead also.

Shri Kamath : One can have one dead and one living.

Shri B. K. P. Sinha : In certain cases one only, living or dead.

So far as males are concerned, there is a misconception that the Hindu law allows polygamy. But I find that there are certain texts of *Yajnavalkya, Manu* and *Apasthambha* which ordain and lay down that a Hindu can have a second wife only in certain well-defined circumstances. When the relevant clauses come up before the House I will quote the *shlokas* and the texts.

Pandit Malaviya : Do you suggest that ?

Shri B. K. P. Sinha : I do not. Now Bombay and Madras have passed legislation laying down that there shall be monogamy. This principle of monogamy has been recognised for Hindus in the Special Marriages Act and in the Civil Marriages Act. I find that this principle, that it is salutary to strick to one spouse has been recognised indirectly by the Married Women's (Separate Residence and Maintenance) Act which recognises that a married woman can get separate residence and maintenance if the husband goes in for another wife or a concubine. It has been recognised that oneness of a spouse is slautary. Any deviation from it is bad and in that case the woman is allowed the right of separate residence and maintenance.

Shri Kamath : What about polyandry ?

Shri. B. K. P. Sinha : Then I come to the other principle, divorce. Dr. Mookerjee was furious; he said that Hindu marriage was sacramental, indissoluble, immutable. There is no escape for a man who once commits a mistake in marrying a certain woman ! But I find from some of the old texts that Hindu marriage was not as immutable, as

indissoluble as Dr. Mookerjee would claim. I would read out a text which tells us that even the woman has a right to go in for another husband. This is the text of *Narada* and *Parashar:*

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पत्यौ ।
पञ्चस्वापत्सु नारीगां पतिरन्यो विधीयते ।

"Another husband is ordained for women in five calamities, namely, if the husband be unheard of or be dead, or adopt a religious order, or be impotent or become outcaste."

Pandit Malaviya : Will you kindly read also the commentary on that?

Shri B. K. P. Sinha: I will leave it for you.

So it was not as indissoluble as Dr. Mookerjee would like us to believe. There were provisions for dissolution of Hindu marriages in certain exceptional circumstances. Thereby, the principle of contract was recognised indirectly. Moreover, the Civil Marriage Act also recognises the principle of divorce and these authorities apart, in the modern age, in the present conditions of India, If we do not have a law of divorce for the Hindu society we must be prepared for the disintegration and the ultimate dissolution of the Hindu society.

In this connection I am reminded of two or three cases which created such a furore in Bengal, the home province of Dr. Mookerjee. Hindu law as practised there does not leave any scope for divorce. I know at least of two cases in which the parties belonged to the Brahman caste. They were married. They led a happy life for some time. Thereafter, their life was unhappy. There was no escape for them. In both the cases, the wives went to a famous mosque at Calcutta and were converted to Islam and thereby they got the marriages dissolved. Society in India has reached such a stage that if you do not have a law of divorce you must be prepared for such incidents, I do not know whether Dr. Mookerjee by standing against this provision is doing any good to the cause of Hindus or like all fanatical champions he is doing positive harm to Hindu religion and Hindu society.

Shri Chattopadhyay (West Bengal)**:** Did they not later on become Hindus ?

Shri B. K. P. Sinha : At any rate, it is clear that if you want divorce you have to be converted to some other religion. I urge that only.

There are many such cases where parties have adopted some other religion just for obtaining divorce. We must take note of advance and

progress. We must see the stage that society has reached. We are not living in an age when India had no contact with the outer world. We are living in an age when ideas have a knack of crossing the borders of countries. We are living in an age when certain theories of liberty and certain theories of freedom have crept into the minds of men and women, especially young men and women and, if we do not allow scope for the working of those ideas it is my fear that Hindus society as we know it today shall not long be able to maintain its existence.

Then some of my friends urged that the provincial laws were there and why we should not leave the matter to the provincial governments. That is exactly the reason why I urge that we should have a Central law. Marriage, divorce, adoption, succession and inheritance form part of item 5 of the Concurrent List. It is open to any State Legislature to Legislate on any of these matters and some States have legislated. Supposing we do not legislate, what would be the consequence ? The consequence would be that custom, for which Dr. Mookerjee shed so many tears, would be abrogated in all the different provinces by the provincial legislations and then you would have statutory laws differing from each other in all the provinces. If custom is the only vehicle of progress and development, that vehicle will be destroyed and there would be rigid compartmentalised law-26 or 30 laws, in fact as many laws as there are provinces or States in India. I shudder to think what will be the effect of that on Hindu society and ultimately on the strength of the nation, for a stable and uniform society is an essential ingredient of a strong and stable nation.

Then there is the question of inter-marriage. In previous times, people of one territory were born in their territories ; they grew up in their territories ; and they died in their territories. They were governed by the customs and usage of that territory. What do we find today ? In this Parliament, in the galleries of this Parliament, there are Members from all parts of the country.

Shri Kamath : On a point of order—can the galleries be referred to?

Shri B. K. P. Sinha : I am not addressing the galleries. If I can talk of the country, I can as well talk of the galleries.

Residents of various parts of the country are assembled here. Not only in this City, but in every important city of this country you find persons from different provinces—in Calcutta you find people from Travancore ; in Travancore you find people from Bihar and Calcutta.

Very often, the residents of the different provinces, in spite of the restrictions imposed by customs and usage and sentiments of the orthodox, find ways of coming together, in nuptial contract. What shall be the effect on them and their progeny if we allow these various provincial laws to operate. Suppose a man from Bombay marries a girl from Bihar and in Bihar he marries another woman. In Bombay monogamy is the law. What will happen to his marriage in Bihar. While his children by that Bihar wife will be legitimate in Bihar, when they go to Bombay they shall be considered illegitimate and shall have no civil rights. What will happen to the hundreds of couples coming from different castes and different provinces ? What will be the rights of those children ? If you allow individuals to opt, many anomalies are likely to arise. A man may opt for the new Code ; his father may be governed by old Hindu law ; and the optee's son may not opt for the new Code. What laws would govern such a family ? If, therefore, the suggestion of my hon. Friends were to be adopted, there will be such confusion, that the confusion in the tower of Babel as compared to this was nothing. It will take the Judges centuries to clear the confusion. Therefore, I feel that we have reached a stage when in the interests of Hindu society we cannot but have such a law.

Previously in the provinces there was certain rigidity—people living in a certain province had one social tradition. People of the same caste had almost the same intellectual development, the same cultural code, etc. In those circumstances, when one married out of his caste one went to a different world altogether. But today these cultural, economic and intellectual disparities are disappearing. Society in India is becoming one. While previously there was some justification for marriage within one's caste or inside the province, there is no such justification today. because the cultural level, the intellectual level and the economic level of the various communities are coming on a par with each other. According to eugenic principles marriage outside one's caste under the previous state of affairs would have been bad. Today the laws of eugenics point in a different direction altogether. They point to a direction in which the hon. Mover of this bill is attempting to lead us.

Dr. Mookerjee talked about the intensity and the depth and breadth of feeling in the country against this Code. I am a villager. I do not come from one of those advanced cities where the most modern theories are the order of the day. I know the minds of the villagers on this matter. I know that there is a lot of misapprehension in their minds about this

Bill. That is because the opponents of this code have for the last five years or so been carrying on a tearing and raging propaganda against it while the supporters of the bill have been keeping mum and slient. In my area also people were by and large, opposed to the provisions of this Bill. But when I explained to them the provisions of this Bill in detail I can tell you that at least 70 per cent, of them became converts and they realized that nothing short of this was needed for the society. When Dr. Mookerjee says that there is intensity of feeling I concede that. But when he talks of the depth and breadth of that feeling I disagree. There is no depth in it because that feeling is based on ignorance. There is no breadth in it because the people, by and large, are not against this Code. It is only a handful of moneyed people who care more for their property, for their land, for their shares who are putting up such a row against this measure. I have had intimate talks with some of these orthodox people. They do not care a grain, an iota for the Hindu Law or the Hindu principles, or the *rishis* or the *smritis*. What rouses them into opposition is the property clause.

Shri R. K. Chaudhuri : That has been dropped now.

Dr. Deshmukh (Madhya Pradesh)**:** But wife also is property.

Shri B. K. P. Sinha : These are the three lines of my argument. There is nothing revolutionary in this. All that we are going to have is already there on the statute books. Secondly, this Bill does not go against the fundamental principles of Hindu religion. Rather, it tries to bring the circle full. The wheel has gone a full circle and Hindu law is being restored to its pristine purity. Thirdly, this law is essential for the existence of Hindu society in the circumstances of today.

Since one of my friends from Bihar, Mr. Syamnandan Sahaya, when he spoke last referred to Dr. Jayakar, I would like to quote a very small paragraph. While writing his foreword to *Hindu Law* in *Bharat* published in 1951—and the foreword was written in 1951—what has Dr. Jayakar to say about this aspect—not about Hindu Law in general but about the aspect to which I referred ? He says :

> "The author has not omitted *to* note some of the prominent deficiencies which exist in present-day provisions of the Hindu Law, requiring early redress."

An Hon. Member : Who is the author ?

Shri B. K. P. Sinha : The author is another person, but the foreward is written by Dr. M. R. Jayakar—a scholar of Hindu Law, not the politician.

Shri Syamnandan Sahaya : Also a politician.

Shri B. K. P. Sinha : Probably my friend Mr. Syamnandan Sahaya referred to Dr. Jayakar, the politician. I am referring to Dr. Jayakar, the scholar.

Shri Syamnandan Sahaya : Do you mean that politicians are not scholars ?

Shri B. K. P. Sinha : They are. And then Dr. Jayakar goes on to say in his foreword:

> "He observes that in modern times facilities of transit and interchange have enormously increased and various causes, appropriate to the times have compelled people of different races and religions to live together in territories governed by different systems of law. These new factors naturally tend to complicate problems of human life in the sphere of their legal relationships. Rules framed to regulate municipal and purely local set of circumstances prove inadequate or even out of place to deal with such problems arising out of the introduction and presence of foreign elements within the territory. The development of a Body of Rules to cover these new sets of circumstances is alreay overdue."

***Dr. Deshmukh :** I am afraid probably my hon. Friends who welcomed my getting up to speak by saying "hear, hear" may be disappointed at what I am going to say today.

Shri R. K. Chaudhari : Have you changed your mind ?

Dr. Deshmukh : To a certain extent, probably, yes.

An hon. Member : Wise men always do that.

Dr. Deshmukh : I have been member of the Select Committee and I have appended a note of dissent to the Committee's report. But that covers only four points. That note of dissent itself shows that appart from those four points, I am in general agreement with the many provisions proposed to the Bill. At the same time. I always felt that the time had not come when it was possible to revise, with some other and different ideals in front of us, the whole structure of the Hindu society and to change it radically. Ours is a vast country and the Hindu community is extremely large and numerous. We are also highly uneducated and absolutey, illiterate. From that point of view if you wish to change the basis of the Hindu society to any violent or great extent, the people who are not capable of understanding the changes are likely to suffer considerably. From that point of view I thought that

*P.D., Vol. XV, Part II, 17th September 1951, pp. 2732-38.

the reforms so far as the Hindu Law is concerned should be as and when required and whenever a certain situation demands them, and only when the public opinion was ready and well-informed and was capable of following all the modifications in the social structure which we desire to bring in then alone we should attempt a thing of that nature.

Therefore, I hold that the Hindu Law even when codified will not help us unless it is your desire to remodel the whole Hindu society for which the time, I submit, has not yet arrived. The Hindu law as laid down by the *Smritis* and as interpreted by the High Courts and the Privy Council is fairly well crystallised ; there may be certain differences of opinion ; there is a possibility of conflicts in interpretations but they are understandable and we have had this experience of these 150 years and this has not led to any great suffering or any great hardship....

Shri Lakshmanan (Travancore-Cochin) **:** On a point of order, are we at the general discussion or discussion on clause 2 ?

Mr. Chairman : He is in order.

Dr. Deshmukh : My remarks are really relevant so far as the discussion on this clause is concerned. What I was going to point out was that if we were going to remodel the society and change the whole law so as to suit modern times in an ideal manner that would be something far different from what we are attempting here. Even in what we are attempting at the present moment, I do not think that the Hindu Code represents a complete remodelling of the Hindu society. We are after all codifying what exists although with some changes. Because at the present moment and in this modern age, if we really want to follow modern ideas, I do not know whether the conception of any private property is going to survive very long. What is the use therefore of discussing the property law and debating whether it is according to the *Mitakshra* or the *Dayabhaga* or we are going to introduce the principle of primogeniture or something else. I personally feel that so long as we have the Hindu laws by which we are governed at the present time, and so long as it is a fairly well understood law, which the whole population and the whole Hindu community understands, the time has not come when we should attempt a radical and whole-sale alteration of the law which governs the society. Because, that is likely to create more trouble than we have at the present moment. At the same time, I have always advocated and I am in favour of removing those difficulties, those harrassments and those persecutions which exist and because of which, there is human sufferring. So far as these things are

concerned, I think it should be the endeavour of every Member of Parliament to support the Bill; wherever it is found that our social structure is likely to suffer, and where it has led to a good deal of inconvenience and trouble, those reforms ought to be taken up and there should be no compromise with any orthodoxy.

1.00 P.M.

Shri Kamath : While we would like to hear the hon. Member, there was a half-hour discussion to be taken up at one o'clock ....

Mr. Chairman : That has been postponed.

Shri Kamath : We have had no notice.

Mr. Chairman : It has been struck out here:

Dr. Deshmukh : So far as removal of difficulties and hardships is concerned, I am prepared to go even farther than the sponsors of the Bill. The prohibition of polygamy and introduction and enforcement of monogamy are extremely desirable reforms. I also agree that it is time that the Hindu society provided for divorce under the law. There maybe some restrictions imposed ; but I do not think it is possible to shut our eyes to the instances and facts which come to our notice. It maybe a thing which my orthodox and *sanatani* friends may dislike. Of course, many of them dislike any change whatever. Unfortunately that is the position. Here, I must clear a misunderstanding. I have been regarded by some *sanatani* friends as a staunch opponent of the Bill on all points and in every respect. It is therefore that I have prefaced my remaks with the remarks that my hon. friend Pandit Mukut Bihari Lal Bhargava will probably not welcome what I was going to say today. The provisions should, however, be confined to these two aspects.

Further, I would like some provision by which we can better the conditions of our widows. I have seen a great number of instances where they are undergoing inhuman suffering. So far as widows' rights to property are concerned, we have had amending Bills. We have passed certain laws. But, to my knowledge, they have not benefited those for whom they were intended. I would like to persuade the hon. Members of the House that we should make some provision so far as they are concerned.

Shri Bharati : We are not discussing that now.

Dr. Deshmukh : I do not know if any announcement has been made in the House whether we are going to leave out of consideration those other sections and confine ourselves to only these things *viz.,* marriage and divorce. Because I was not here, I do not know what decision has been taken.

Shri Bharati : We are not likely to take them up.

Mr. Chairman : Let the hon. Member go on.

Dr. Deshmukh : If it is intended that we should confine ourselves only to the passing of a law that one person can at one time have only one wife, I would not very much object. But, as has been pointed out by my hon. Friend Dr. Syama Prasad Mookerjee, much ado is being made about a thing which is dying out by itself. The present struggle for existence and the economic forces at play are themselves bringing about the desired change. Therefore, although it is a necessary reform, I do not think it is something that some people may be prepared to die for.

So far as divorce is concerned, I think there is much to be said in favour of divorce. At the earliest possible moment, this provision ought to be made. As has been pointed out by many Members, this is only a permissible reform, merely making provisions for divorces—the mere presence of the provision does not mean that every one will take advantage of it and get a divorce. What is the present position ? There are certain States— Baroda for instance, where divorce is allowed. And many who cannot agree between themselves or for other reasons who cannot get on, merely go and stay at Baroda for some time and obtain some sort of certificate that they are residents there and in this way get their purpose fulfilled. Wherever a married couple cannot get on together, may be for any reason, may be because one of them is suffering from a bad disease or there may be many other factors which cause a deterioration of their relationship they should be able to separate. It is human to expect under modern conditions that this freedom should be made available to them and it should be possible for an individual to get a divorce and separate. From that point of view, I submit that the provisions so far as divorce is concerned, are desirable. But on one point I vehemently disagree with Dr. Ambedkar and that is with regard to not recognising the customary divorce. He wants that all divorce cases must...

Shri R. K. Chaudhari : I want to get a point cleared. Does the hon. member advocate divorce of scramental marriages and also at the same time the continuance of sacramental marriages ?

Dr. Deshmukh : I do not think there will be any difficulty. Even now a good many sacramental marriages get dissolved. That happens in various communities and under the Hindu law. And who is going to say that marriage under the so-called backward communities, which really are more advanced than others are not sacramental marriages ?

They are and they are recognised by custom and their divorce systems are also recognised by customs and by the caste *panchayats*. But the Hon. Minister wants that all these cases must go through an involved method where lawyers will be necessary and all sorts of evidences will have to be taken and the whole thing will prove to be a hardship to these people.

Dr. Ambedkar : Let there be customary marriage also.

Dr. Deshmukh : If the provisions of the Bill are limited to the removal of the defects now present and we do not go further than that, then I would be prepared to support and I will not say that since you are not going to make it applicable to everybody in India therefore it should not be made applicable to Hindus also. I had raised that point as a major issue, because I felt that if it was intended that the whole of the Hindu society should be radically changed, then there was no reason why we should not make all the provisions of the measure applicable to all the people living in India. But since this is intended as a sort of a reform and the scope of it is confined specifically to certain sections. I have no quarrel so far as this point of view is concerned.

Dr. Mookerjee undoubtedly went too far in asking that it should be left to the option of people. If that be the course that we adopt, then even the simplest possible reform demanded by society would be impossible. I do not know why he took that view though he has been very reasonable on most other points. This smacked a bit of a no-changer. He was prepared to support the divorce provisions if monogamy is made applicable to all the communities living in India. Although it looks plausible, it smacks more of obstructionist tactics than helping the passage of the Code. I for one stand even for radical reform which will not create confusion in the Hindu society. These provisions are not such as are likely to create confusion, because everybody need not resort to divorce or take advantage of the provision. There are inumerable cases where both man and wife suffer and desire that separation would be ideal. For such cases we make provisions by which separation would be allowed and I do not think it should be anybody's business to come in their way merely on the ground that in the remote past we regarded marriage as a sacrament and not as a contract. As I have already said even sacramental marriages could be dissolved according to custom. After all recognition of sacramental marriage is recognition of customary marriage, because it is governed only by custom. There are many different forms of marriage. In some

cases there is *saptapadi*. I hope the modification which I have suggested will be acceptable regarding customary divorce. Originally it was the intention that all custom should be wiped out altogether. I am glad that Dr. Ambedkar has modified that stand but I am afraid he will have to modify it further. In one place where he had to explain his view point he said that custom must be such that it must be sensible, reasonable and satisfy certain other requirements. He expected custom to answer to standards of reasonableness. But what is reasonableness ? It can differ from man to man and from group to group. What may be regarded as reasonable by Dr. Ambedkar would be entirely unreasonable to Mr. Kamath or Pandit M. B. Bhargava....

Shri Kamath : Do you lump us together ?

Dr. Deshmukh : Oh, No ! Not jointly but severally. From the point of view of custom I must say that the learned doctor, must be willing to go a little further, because every custom has had a history and it is not arguable on the basis of reason. Originally the view of the sponsors of the Code was that custom, whatever it was, was bad. That was why they provided that all "custom" was bad and no custom will be recognised under any circumstances. The whole society was to be governed by the provisions in black and white of the Code and no variation of any kind was to be recognised. Fortunately you have come to a stage when you are prepared to recognise custom. But to what extent is the question ? On the one hand you say that it should be reasonable but in many instances this is a contradiction in terms...

Dr. Ambedkar : Why **?**

Pandit Thakur Das Bhargava : It has to be reasonable before it is recognised.

Dr. Deshmukh : In customary marriage one of the things essential and recognised as a necessary ingredient is that the bride and bridegroom must take seven steps round the fire. I do not see any reason or reasonableness behind it. What function does it perform ? How does it help so far as the wedlock is concerned ?

Shri Kamath : It is symbolic.

Dr. Deshmukh : Similarly.....

Mr. Chairman : Is the hon. Member likely to continue his speech ?

Dr. Deshmukh : Yes, Sir, I will take sometime longer.

The House then adjourned till Half Past Eight of the clock on Tuesday, the 18th September, 1951.

*HINDU CODE—*contd..*

Clause 2.—(*Application of Code*)—*Contd.*

Mr. Deputy Speaker : The house will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law as reported by the Select Committee.

Dr. Deshmukh (Madhya Pradesh)**:** Sir, between the time I left my speech incomplete yesterday and now, two fine ladies who did not share...

Shri Sondhi (Punjab)**:** What is meant by "fine ladies" ?

Dr. Deshmukh : Two cultured and....

Shri Sondhi : You may say modern ladies.

Dr. Deshmukh : No, not so modern as we are accustomed to see. As I was saying, these ladies placed before me very strongly and sincerely their point of view. It was clear they viewed the Bill from a different angle. And while the Hon. Prime Minister is here I may also say that these ladies complained that their point of view has never received adequate consideration at the hands of the Prime Minister, and that there have been attempts made to come in the way of his being informed of the strength of their feelings and the view point that they wished to present before him. If this is a fact, and if it is not too late to do so, I would feel much obliged if these ladies could call upon the Prime Minister to place before him their point of view. They are entirely opposed to the Hindu Code Bill in any shape or form, including the provisions relating to divorce and monogamy. They say that it is an attack on Hinduism and on Hindu religion which will be not for the good of anyone. They also contend that essentially these are radical changes and these are sponsored by a few...

The Minister of Law (Dr. Ambedkar) : For my own enlightenment, I would like the hon. Member to say what he means by "they". I could not hear the opening part of his sentence.

An Hon. Member : Two fine ladies, he said.

Shrimati Durgabai (Madras) **:** Will the hon. Member give us the names of these ladies for the benefit of hon. Members, because this may reflect on many ladies who are not of that opinion.

Mr. Deputy Speaker : Two ladies do not cover the entire world.

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*P.D., Vol. XV, Part II, 18th September 1951, pp. 2742-50.

Dr. Deshmukh : They are as representative as my learned sister here claims to be in this House. And, Sir, it is also their contention that in their discussions they have been able to convert many persons who had agreed with my hon. sister here and who were of her inclination. They are opposed to divorce because they say....

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru) : Who are they ?

Dr. Deshmukh : Sir, by this interruption I think the Hon. Prime Minister has admitted the statement that he has not seen them.

Shri Jawaharlal Nehru : I do not know who they are.

Dr. Deshmukh : There is a Women's League in existence in India and....

Shrimati Durgabai : Yes, nobody denies that; but we want to know the names of these two ladies.

The Deputy Minister of Food and Agriculture (Shri Thirumala Rao) : He is referring to persons who are outside the House and are not in a position to defend themselves.

Mr. Deputy Speaker : There is no question of defence or offence.

Dr. Deshmukh : I am glad Shrimati Durgabai admits the existence of a Women's League

Mr. Deputy Speaker : There are opinions and opinions on the Code hon. Members are entitled to say that there is a certain opinion, that some ladies came to him and represented it to him. Further reference to the ladies is not necessary. It is for the House to accept or reject such an opinion of those people. In so far as a Member wants to mention the opinion which he is either going to support or controvert he can do so, instead of saying two ladies every now and then.

Shri Jawaharlal Nehru : The difficulty is that he particularly referred to me and wants me to see unknown people of unknown whereabouts. How can I do that ?

Dr. Deshmukh : They will not remain unknown and unseen as soon as they appear before the Prime Minister.

Shri Karunakara Menon (Madras) **:** Are they above sixty or below sixty ?

Mr. Deputy Speaker : Evidently the Prime Minister has not given an interview to those ladies. If the hon. Member is not willing to give the names, he will communicate them.

Shrimati Durgabai : Unless they want to remain anonymous.

Dr. Deshmukh : Not at all. The mere mention of there being ladies of a different viewpoint has excited our sisters here so much. (*Interruptions*). They are also aware that a good many ladies, not alone the few ladies who came to see me, have resigned from the All India Women's Conference.

Several Hon. Members : Who are they ? (*Interruption*).

Dr. Deshmukh : I can give not only their names but if I present them before you in all their strength you will probably be frightened. Their number is so large that it is impossible to give their names.

Shri Sidhva (Madhya Pradesh) **:** They are unknown women : they were canvassing in the Constitution House yesterday.

Dr. Deshmukh : You have seen two of them yesterday.

Shri Sidhva : They were unknown women.

Dr. Deshmukh : Those are the very ladies I am referring to. .

Mr. Deputy Speaker : The hon. Member will resume his seat. This is a very contentious matter. There is a large body of opinion in favour of it and there is also a body of opinion against it. It is no good talking of unknown women and unknown men. It does not add to the dignity of the proceedings of the House. The hon. Member need not refer again and again to these two women. There are not only two but two thousand against the code and there are also two million on the other side. So there is opinion both for and against. We are here discussing the bill dispassionately. Let nothing be said which, is derogatory to the high dignity of the House. Unknown women and unknown men are expressions which are not rather very parliamentary. The hon. Member need not pursue the matter by saying two ladies, again and again.

Dr. Deshmukh : I had no desire to do so but for the interruptions. Sir, I will now come to the various amendments moved in the house. My friend Dr. Mookerjee suggested many alternatives to the acceptance of the Code. One of them was to make the provisions of the Code optional. There is also an amendment to say that there should be a referendum and if the majority of the people supported the Code in the referendum, then it should be made applicable. I had given notice of an amendment last time which referred to the Hindu Code as a whole and suggested that it be made applicable in any State after the Legislature of the State after the next elections had ratified it. There is a good deal of force in the suggestion regarding ratification by the State Governments and State Legislatures. After all we are not trying

to go the way of Hitler and other dictators who forced social and other reforms on the people. We are a democratic nation and want to stick to democratic methods. If there is to be democracy and since this is only a personal law and not a law necessary for the maintenance of law and order or other purposes (it may be necessary in the view of some for the advancement of the community) there can be two opinions and one can be as honestly and steadfastly held as the other one.

In the case of some of the reforms suggested the experience elsewhere in the world has not been altogether happy. Take for instance the divorce law. There are various degrees of divorces and varying facilities for obtaining the same current in the world. Those who advocated divorce and wanted to organise society on individual freedom have come to grief and looking at these consequences in foreign countries, when some of our people merely try to imitate others, because they think it is more fashionable to advocate that view, some people feel apprehensive that this is sheer mad and sheepish imitation. That spirit of sheer imitation is there and the support for it is also there, because these people have never had the patience to study the actual results which have come about in foreign countries. So the orthodox opinion which does not share the view of the reformists is equally honestly held and is as well founded. When we know that the Hindu religion, the Hindu law and the Hindu custom have survived the onslaughts of history for thousands of years, naturally we feel that this is the one country or nation or community which has something of its own and instead of there being a flat uniformity, the consequences of which have been evil in many cases, why not try and evolve a system just as it has been evolved all these thousands of years. I do claim that the Hindu religion and the Hindu law are the one religion and the one law which have been evolved through the centuries. They have not remained stagnant and I am sure Dr. Ambedkar will admit that the Hindu law and custom have never been static: they have adjusted themselves to the circumstances from time to time and are capable of doing so hereafter also.

It is quoted that the Chinese and the Americans say that we are a backward people, because we have not got such and such a social system. Before we accept such comments bearing upon our society and before we incline ourselves to accepting their viewpoint, we must know what those people are. May I ask how far these Chinese and Americans have studied our religion and our law ? Have they imbibed the spirit

of the Hindu religion before they condemn it or suggest any reform in our society ? That is a very pertinent question. Merely saying that a group of persons from foreign countries do not like it and suggest some modifications in our law or custom cannot be accepted. If we merely try to please a certain group of individuals without judging the background of the views they hold we would be meeting the fate of the donkey, the old man and his son, who tried to please every group of spectators they met on their way. In the beginning they were carrying the donkey and the old man and his son were walking. People laughed at them saying "Here is a man leading a donkey without either he or his son riding" so the old man got up on the donkey leaving the son to walk beside him. Still people laughed at them saying "Here is the old man riding the donkey leaving the poor little boy to walk along." So the boy also.....

Mr. Deputy Speaker : Every body knows the donkey story.

Shri Bharati (Madras)**:** Who is the donkey here ?

Dr. Deshmukh : I want to impress upon the people that they are donkeying.....

Mr. Deputy Speaker : Details of the donkey story need not be retailed here.

Dr. Deshmukh : I would not have referred to this story but since this donkeying is going on time and again, very sensible people who ought to understand the value of the opinions of foreigners somehow or other try to persuade us and influence us by that mere fact. They say because certain foreigners say something there should be certain changes. I for one would not only not listen to such opinions but would not like anybody to give up his own viewpoint on this ground.

So far as the basis of the Code is concerned it should be introduced only where we find that the circumstances demand it and not force things against the will of the people. It is certainly true that there is a very large body of educated women who are behind this Code. They are said to be very firmly of the opinion that the passing of the Code is necessary. If we analyse the amount of education there is especially among the women of India, we will realise that these women are hardly a drop in the ocean; the number of these women who are asking for a radical reform and changes in our law is extremely small. On the other hand, they are so impatient that they are not prepared even to listen to the other point of view of the ladies who have as much sense as they have except their English or Foreign education. When I was referring to

"they", I was referring to those millions of women living in our villages who have as good commonsense, and who know what they are and what they wish to be; it is they who are apprehensive of the changes that you are suggesting because even the introduction of divorce is going to change the attitude of everybody, of the society as a whole. The question I would like to ask is : Are you going to enter a wedlock with the idea of divorce, or are you going to enter wedlock with the idea of staying in it permanently ? If you adopt measures of easy divorce there is going to be a big change of attitude. Of course we are prepared to have that change and suffer the consequences, but the educated ladies who are sponsoring and advocating the passing of this Bill have not thought of all the consequences that are going to be fall especially to the lot of the illiterate women. After divorce an educated girl may be able to stand on her own legs, get a sufficiently lucrative job anywhere, and probably get a better husband. But what is going to happen to an illiterate woman ? My lady friends here still complain of the dominance of the male sex, and to the extent that the woman is tyrannised by men, what is going to happen to the illiterate woman who will be the object of these vagaries and domination of the male sex ? Have these educated women ever considered the consequences which will result from divorce for example, the care of children and their protection ?

So, although I have expressed myself in favour of it, I would like to caution that in introducing any reform or changing any portions of our law we must coolly study the consequences that are going to result therefrom. Unless we do that we may be trying to do things which may not be necessary at all. I feel that there is much in the Hindu religion, there is much in the Hindu Law which deserves to remain, though probably in a slightly reformed condition. But the attitude behind some of the suggestions is somewhat anti-Hindu : they regard everything Hindu as suspect and look down upon it with contempt. They have somewhere or somehow imbibed the idea that whatever exists in India is absolutely rotten and that unless they go on the lines of foreign nations and imbibe their ideas and introduce them here, the Hindu society will not come up to the standards they expect of it. I am quite prepared to admit that they are actuated by honest motives, but at the same time there can be a different point of view which suggests that merely by blind imitation you are not going to survive. The way to survive is to modify according to the times and not go on in a whole-hogging fashion to change the very basis and fundamentals of our law and society. And

from that point of view I suggest considerable caution. When I spoke yesterday, I thought the intention was to pass this Bill with only the marriage and divorce sections in it and that the rest of the bill was not likely to come up. But now I find that is not the attitude of those who are in favour of the Bill; they do not wish to omit the other portions. They are prepared to confine the enactment to the two chapters only from the point of view of availability of time but they do not wish to give up the rest of the Bill. If that is the idea, then I am afraid many of the Members of this House will probably change their attitude because it does not mean it is a compromise which will last as after getting these two chapters passed they will probably insist upon the property clauses and the other sections of the Code. If we look to the history of the codification, we will find that there is a great and important body of public opinion against the Bill. Most of the bar associations have not only been against modification but they have been against codification also. The Committee that was appointed for the purpose found, when it went round the country, innumerable associations and innumerable individuals who expressed their strong condemnation of the proposals that were going to be made. Under these circumstances, I feel that it is not proper that we should say that after passing these two chapters we will take up the rest of the Bill also and that we will not give it up. It should be definitely understood that so far as this Parliament is concerned, we should confine to the marriage laws provided in this bill. The question of whether there is any possibility of the property clauses being taken up will, I think, determine the attitude of support or opposition of certain Members of the House. If it is the idea that the entire Code should be taken up, then it would be very wise to leave this to ratification by the State Legislatures. Then we will be giving them sufficient time to educate public opinion so that if the Code is really wanted, if there is any important body of public opinion in favour of the various detailed changes sought to be made in the Hindu Law, then the concerned State can accept it. And there is no harm in one State accepting it and another not accepting because this is a matter of personal law and it should be completely open to any individual or group of individuals to choose the sort of law that they want.

While I support the provisions with regard to monogamy and divorce and say that they may be passed, although I would like to suggest certain modifications, and one I have already moved yesterday, namely that the customary divorce should be allowed to continue—and I am glad

to find it is likely to be accepted, I suggest that the present proposals should be confined only to the marriage and divorce laws and nothing else should be enacted by this Parliament for the present.

***Shrimati Jayashri** (Bombay) **:** I beg to support the amendment moved by the Hon. Law Minister to clause 2.I am glad that sub-clause (4) of clause 2 is sought to be dropped. That sub-clause says :

> "Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all the Hindus whose marriages have been solemnized under the provisions of that Act prior to the commencement of this Code."

10-00 A.M.

I am glad that this sub-clause has been dropped, because under the Special Marriage Act the rights that people enjoyed were much broader. This applies to the Indian Succession Act also. Although under the Hindu Code we are trying to bring about reform, yet this Code does not confer the same rights which are available under the Special Marriage Act..

Mr. Deputy Speaker : Under the Special Marriage Act, they cannot adopt. Under this Code, they can. Is that not an advance ?

Shrimati Jayashri : I am saying that the inheritance rights there are broader than under the Hindu Code. So, I am glad that he has dropped this sub-clause from the Bill.

With regard to the argument as to why we should not make this an ideal and universal Code which can be applied to Muslims, Parsis and Christians, I would like to say that we must first find out whether Members are prepared to go so far. It would be an ideal Code if we could reach to the stage of the Indian Succession Act and the Civil Marriage Act, but it is clear that our society is not at present prepared even to accept the reforms under the Hindu Code and go thus far. So, I wonder whether Members will accept the broader principles which underlie the Special Marriage Act.

Yesterday, Dr. Mookerjee said that the Muslims also should be asked to accept the monogamy principle. I would like to say that the Muslim Law gives much more rights to women. Under our existing Hindu Law, women are not given those rights.

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*P.D., Vol. XV, Part II, 18th September 1951, pp 2750-54.

Mr. Deputy Speaker : He was on the question of monogamy.

Shrimati Jayshri : Monogamy and sacramental marriage. In regard to our sacramental marriage, this is what the married couple pledge themselves to do :

> "Having taken these seven steps with me, we have become companions. May I retain that companionship and never part from thee nor thou from me. Let us be united. Let us always take counsel together, loving each other and ever ready in each other's company, let us be united in mind and grow together in strength and prosperty. Let us join in our aspirations, our vows and our sorrows."

May I ask whether this ideal of sacramental marriage is kept in our present society ? I would request Dr. Mookerjee to give his honest opinion whether he really thinks that no reform is necessary in our present Hindu Marriage Law. We all know that our Hindu society allows a man to marry as many times as he likes. This vow which we take during the marriage ceremony is only meant for women. Our laws are one-sided. They are only meant for women. We all know that when a man becomes a widower, even at the burning ground when he goes there to attend his wife's funeral his engagement takes place. So, a man considers marriage in such a light manner. And still, we talk of our Hindu marriages being sacramental.

Mr. Deputy Speaker : Widows also can marry.

Shrimati Jayashri : Women are more conservative in that way. They still consider that they would not like to marry even if they become widows. They do not seek to have second mrriages, but due to the one-sidedness of our Hindu Law *Nariprathishta* has gone down.

Hon. Members must have read K. Mushruwala's article in the *Harijan* where he shows how we are treating women in our society at present. We all know how in the Mahabharat the clothes of Draupadi were removed and she prayed to Krishna:

"कौरवार्णवमननामाभुद्धरस्व जनार्दन"

("I am sinking in the sea of *Kauravas*. Save me O Krishna.")

Similar cries we hear today from our poor women who are ill-treated by our society. We call our Hindu society *Sanatana,* that is to say, *Sada Nutan* (always new)—it is always changing. Change is the essence of life. If society does not change, it becomes stagnant. For thousands of years our society has survived because it has accepted changes.

The idea has been pressed that we should not have divorce ; that our marriages are sacramental, as Dr. Deshmukh said just now, from olden days we read in our *Smritis* (*Parasara* and *Narad*) that under certain conditions divorce was accepted. In the Hindu Code today we have tried to maintain the sanctity of marriage and the welfare of the parties. The framers have provided prior remedies for avoiding the extreme step of seeking divorce and those are restitution of conjugal rights and judicial separation. Therefore, divorce is not very easy. In Baroda the Divorce Act was passed in 1937, and in the analysis taken in the year 1939 the cases of divorce and judicial separation were 42 in number. Out of these, eleven were due to cruetly ; two due to desertion and cruelty, seven due to desertion by husband ; one due to desertion by wife ; six due to cruelty and habitual drunkenness of husband and marrying a second time. These cases show that divorces are not very easy. Only under special conditions divorces are granted.

Also we know that divorces are prevalent in the lower classes. Only in the upper classes this Code seeks to introduce this change. Yesterday, Dr. Mookerjee raised the cry of 'religion in danger'. I would ask him whether beating of one's wife is considered to be religious. A woman filed a suit in one of the courts in Madras for assault by her husband. And the learned judge gave a judgement that beating the wife is allowed in Hindu Law. So, may I ask him whether such cruel customs can be called religious ? Religion is always personal contact with God.

"ईश्वरः सर्वभूतानां हृद्देशेर्जुन तिष्टति"

[O Arjun ! God lives in the hearts of all living beings.]

It is not by passing particular laws that religion can be in danger. As I said Hindu religion is a vast ocean where changes take place now and again and we have accepted these changes. That is why our structure of Hindu religion has lasted for such a long time. May I also draw your attention to the necessity of changes in Hindu structure. I would say that at present our law is one-sided. We do not give any relief to our women. We have our National Planning commission which wants to plan on the present structure. I would say that unless the social structure is changed, it is no use planning on that body which is rotten. I would in this connection like to make some suggessions for improvement in our society. In a planned society woman's place shall be equal to that of man: equal status, equal opportunities and equal responsibilities shall be the guiding principle to regulate the status of woman, whatever the basis of society in the plan. Woman shall not be excluded from any

sphere of work, merely on the ground of her sex. Marriage shall not be a condition precedent to the enjoyment of full and equal civic status and social and economic rights by woman.

May I ask whether at present the status of woman is such, so that we can plan properly in the present society. Family life and organisation and woman's enjoyment of a share in the property are very necessary. Marriage and succession laws governing these are also necessary and that is why I feel that unless some change is made in our present Hindu Law, I do not think it would be possible to build on the structure that we find at present.

The Women's Conferences have always asked for a common Code. We are also in favour of a common Code. We are not asking that special privileges should be given to only Hindu women. We all know that at present our women are suffering and are backward. Parsi, Christian and Muslim women are far ahead of Hindu Women in this respect and that is why at present we are supporting this Hindu Code. As I said earlier, if we make this Hindu Code an ideal one, the other communities also will have no objection in accepting our Code.

Dr. Deshmukh said that many women have resigned from the All-India Women's Conference on this question. On the contrary I would say that in our Conference we have from the very beginning, asking for these changes and it was due to our request that so many pieces of legislation on marriage, right of women to property, etc., were introduced. In Bombay when Dr. Deshmukh of Bombay wanted to bring the bill on giving property rights to widows, we requested him not to hurry with this measure, but to wait so that it may include properties for daughters as well as adoption and other clauses. At that time he told us that he would like to hurry with the measure and that he would bring other reforms also. Therefore, these reforms are due for a long time and it cannot be said that we have not taken public opinion. Even this Hindu Code, as you know, is before the public for the last ten years and it is no use saying that public opinion has not been sounded. I think enough public opinion has been created and it is very wrong to say that very few women are supporting this measure. We have had many public meetings in various places and women from all over India are supporting this measure. On behalf of women I give my whole-hearted support to this Hindu Code.

*** The Minister of Works, Production and Supply (Shri Gadgil) :** I heard the speech of my hon. friend Dr. Syama Prasad Mookerjee with great attention. I should say that it was not entirely unhelpful. He said two things which appealed to me. One was that in the matter of social reform we should carry public opinion to the largest possible extent. Secondly he said that this was not a matter of politics, this was a matter in which every citizen of this country was interested irrespective of his or her political views. Because of these two things, I am somewhat optimistic and I am certain that if we are able to create in this House an atmosphere of give and take and of compromise we will be able to put on the statute book something about which individually and collectively we may be proud of.

Dr. Syama Prasad Mookerjee praised the Hindu culture and called it dynamic. I share that view. It is because Hindu culture has the genius of adaptation to circumstances, it is because that it is responsive to new trends that it has survived and it has been the pride and glory of us all. Today there is a greater need for the leaders of thought to consider how we shall attempt to progress further and how we shall bring the law in line with public morality. The old ways may not be effective in the modern times and therefore it behoves us that we must also have to resort to modern methods. There is no dispute about the fact that there are certain evils; although I am a good Hindu and I will yield to none in my admiration for Hindu culture, still I am not blind to the faults which have crept in our life as a community. By adopting a Constitution with the objective of equality of status and social justice, we have taken a great responsibility. We want to inaugurate a society in which there will be perfect equality. If that is the objective, then surely that cannot be achieed by following old methods of shouting old slogans. We have established political equality by adopting the system of adult franchise. We want to secure social justice and remove as far a possible economic inequalities by erecting certain economic institutions which will secure a better standard of life for those who are down-trodden, by securing opportunities for the expansion of the personality of every citizen. And that is only possible in my humble view, by nationalising at least the means of production and securing an adequate standard of wages, controlling profits, and if at all private effort is to be given any place in the economic system by laying down that it shall be under the

*P.D., Vol. XV, Part II, 18th September 1951, pp. 2754-68.

regulation and control of the State. In other words, by legislation we are trying to secure social justice and trying to remove economic inequality. If by legislation we have secured political equality, if by legislation we are attempting to secure economic equality or at least to remove economic inequalities, it is only logical that by the same process, namely by legislation, we must try to secure social equality.

My friend Dr. Syama Prasad Mookerjee stated that by codifying the Hindu Law you are shutting out altogether those sources of Hindu Law which have been functioning from ages and which has secured the means of progress so far. I agree that the sources of Hindu Law are *smritis, shrutis, sadachara,* and one's own conscience. All that is true. But all that was good and valid enough when the political constitution or the political set-up of the country was different from what it is now. Even in the West it was considered that a change in the law could be effected either by legislation or by legal fiction which meant that the law apparently remained the same but in practice it underwent a change and by custom. Even in the West the modern tendency is to depend mostly or substantially upon legislation in effecting the necessary changes which will make the law to be in conformity with public morality. Law always follows public morality. Public opinion goes ahead and progresses because that is the life in the community, not being static or stagnant, continually progresses, continually proceeds, because the law of life. Therefore the legislation comes behind. But there should not be such a big hiatus between the two so as to endanger the happiness of the community. It is therefore the duty of every thoughtful citizen, of every person who has the interest of the community at heart to see that the time-lag between the two is as short as possible.

Now, it is no good depending always upon the second method, namely of legal fiction, and allowing the judiciary to strain the meaning of plain words and asking them to try to bring the law in conformity with the prevailing opinion in the community.

The third method, namely that of custom, is, I should say, a misfit in modern circumstances. After all, custom was good when the legal power of the State was not adequate, was not sufficiently developed in order to enforce what was thought to be just and proper and what was thought to be in the best interests of the community. Now, in the modern world to talk of custom prevailing over law is a sort of anomaly. If the custom is prevalent on such an extensive scale I have not the

slightest doubt that legislators will initiate the legislation and the custom will be incorporated and dignified into a rule of law.

That being so I am unable to understand the argument of my hon. friend Dr. Syama Prasad Mookerjee that we are doing something revolurionary and in such a manner that the normal sources of law which were available will be completely closed. It is not so. Whatever we have inherited we have so to say, instead of putting our inheritance into a number of banks consolidated the inheritance and put it in some bank which has the prestige and strenth of a Reserve Bank, namely legislation. That is what we have done. In fact in the present Code as it is now before this House what is really done is that we are practically coordinating what is in existence—the present law—to the extent of eighty per cent. There is no doubt an element of progress to some extent. I will even concede that there is an element which to some extent goes in advance of public opinion. But I want to ask one question to the Members of this House. Is it or is it not our duty not merely to think in terms of the needs of the persent moment but to think in advance of our society, as we visualise or as we desire that it ought to be ? If planning is good in the economic sphere why should it be bad in the social sphere ? We are anxious that our society should be such. If that is the ideal on which we are agreed and on the assumption that we are . agreed—because we have adopted it as one of the objectives in our Constitution—then we have to consider how we shall manage to take our society to that destination. Can we follow a policy of *laissez-faire* in this sphere or shall we think ahead, think in advance just have our target and gradually, through the mechanism of law, which in due course, become part and parcel of the community's life and arrive at the destination according to the schedule ?

Shri R. K. Chaudhari (Assam) **:** That is questionable.

Shri Gadgil : If we leave it to non-official effort I have no doubt that in course of time, may be two generations hence, things will become as we desire now. But by that time public opinion would have advanced much more. In other words we will never be able to cut the time element between the growing public opinion and the legislation. I therefore say that if there is any element of advance thinking in this Code it is justifiable, and I would say that it is an act of wisdom.

Now the opposition to this Bill has been from several points of view. There are people who do not like any interference by the Legislature in these matters. There are people who think that the Parliament, or the

Legislature of the country, has a right to interfere but not the present Parliament. They rather prefer that the matter should be completely looked after and dealt with by those who will come after this Parliament is dissolved. So far as the first school is concerned I think, as was said rightly by Dr. Syama Prasad Mookerjee, it is too late in the day. Continually, in the course of the last 150 years, legislation after legislation has been passed by the Central Legislature—whatever the denomination of that legislature may have been—and all those things have become part and parcel of the Hindu community and its life. When I said that soon after the passing of this code, same thing would happen, my hon. friend Dr. Syama Prasad Mookerjee was not agreeable. He has accused us, namely the Members of the Treasury Bench of suffering from "Secularities". I should say, knowing as I do, his views of social reform, knowing as I do that he comes from Bengal, a province where social reform was first mooted, beginning with Raja Ram Mohan Roy and carried on by Kesav Chandra Sen, Tagore and other people of great importance and consequence, that I cannot believe that he is seriously opposed to what is being proposed in the Hindu Code, but probably he is suffering from 'electionitis' and if that is so, the cure and remedy will be provided for in the general election. He agreed that it is very difficult to say on which side is the public opinion. I think he is right. We might claim public opinion to be.....

Pandit Malaviya (Uttar Pradesh) **:** Will the Government be prepared to make this Hindu Code one of the issues in the election ?

Shri Gadgil : In spite of the Government, it has already become. The point is that it is difficult to say on which side the public opinion is. I want to ask in all humility one question to the hon. Members of this House, Has or has not the Government which still carried the confidence of this House some right to initiate social reform, not merely the right, but a duty enjoyed on this Government in terms of the clauses of the Constitution ? You have given us certain directives ; you have laid down the objectives. If we do not do anything on those lines, the electorate might turn round and say : Well you passed this constitution merely to fool us. Half the population in this country, namely, the women will say : You talk of social equality but where is that social equality. (*An hon. Member*: Question). I am sure the hon. Member will lose in his own house if he takes a referendum.

Pandit Maitra (West Bengal) **:** Does the hon. Member say half a dozen women of half the population ?

Shri Gadgil : I take a better view of my sisters than my hon. friend is prepared to concede. However, as my hon. friend said, the thing will be evident a few months hence. The point is that the legislature has pressed a number of statutes affecting Hindu life, Hindu marriage, divorce, in fact every aspect of the law. Therefore, we cannot say now that this Parliament has no right. The question whether this Parliament has a right or not. I have already answered. So far this Parliament has been considered to be competent enough to make a constitution for this country and it passes my comprehension to accept a proposition that this Parliament is incompetent to pass an ordinary law.

Pandit Maitra : The House was elected for giving a constitution.

Shri Gadgil : This very House passed the Constitution in which they passed the Chapter relating to transitory provisions. I do not think that my hon. friend Pandit Maitra objected then and said that this Parliament should have no right to govern from now till the new House comes into existence after the general elections.

Pandit Maitra : That is nobody's case.

Shri Gadgil : I am glad. What is after all that is attempted to be done ? As I said 80 per cent, is merely a collection of the existing statutes either passed by the Central Legislature or passed by the State Legislature. Dr. Syama Prasad was very eloquent over *Dharmic* marriage. I do not think that the Code prevents it. There is free scope from the Dhushyanta Shakuntala type of marriage to Prithviraj Samyugita type of marriage, namely from *Gandharva* to the *Rakshasa* type and all the eight forms can be practised by any Member of this House or by the public outside. This Code does not prevent love-making, it does not prevent eloping with bride's consent even against the consent of the parents. So far as eight forms of Hindu sacramental marriage are concerned, they are not affected in the least. What is the grievance ? Is it because the word 'sacramental' has been changed into *Dharmic* ? It was changed because all of us wished it; it conveys no meaning and therefore we said : let us take the word *Dharmic* which will fit in and convey some meaning, and that is why '*Dharmic*' was used.

An Hon. Member : It is a misnomer.

Shri Gadgil : My hon. friend Dr. Syama Prasad was very eloquent over the conception of Hindu 'marriage'. Those noble sentiments I personally share. Marriage is something more than mere union of bodies, it is a co-partnership ; it is joint endeavour for spiritual uplift;

it is so to say a custodian of confidences and feelings which cannot be expressed in any language of the world. It is a noble conception : I do share that but at the same time it does happen that sometime an ideal is perverted. We find that in a progressive society things happen which have got to be taken notice of by those who are leaders of society and who are leaders of thought. I today, particularly on account of our contact with the West, we have somehow or other to go down in certain respects, it does not mean that our culture is less ; it only means a challenge to us to reform. We have got the genius to adopt, we had to act, and therefore, those legislations to which reference was made by my hon. friend, Dr. Syama Prasad Mookerjee were quite justified.

What is this prevention of a marriage between a person belonging. to one community and a woman belonging to another ? Does it sound very well in our modern days, in the year 1951 ? Does it sound very well that a man because he is born in a particular community that he must remain outside the boundaries of the village perpetually ? Does it sound very well that because a man belonging to a downtrodden caste today by his merit has assumed a position of great inportance and is learned today, he must not be given the same social status, the same social welcome, the same social reception as we give to a person belonging to another caste ? Is the *Varna* to be determined irrespective of *guna* or it has to be determined in the context of *guna* or in other words "accomplishment" ? That is a challenge to your sense of equality. If today the old ban against *Pratiloma* marriage is completely broken, you should welcome it. That is exactly what is being attempted. Why should there be such differences ? If marriage is a matter of free choice, why should there be legal impediments in it ? Why should a person belonging to one section or one community not marry a woman belonging to another ? All these artificial man-made impediments must go. I do not remember any case in which the son of a *Brahmin* was born with a copy of *Vedas* or a *Kshatrya* born with a sword or a *Harijan* born with a broom. At birth they are all alike and at death they are all alike. In between the two, it is the duty of the society and the State to see that the same atmosphere of equality shall prevail. Anybody who argues against this, argues against humanity, argues against the very principle which goes to make a man, argues against self-respect. What is being done here ? Nothing contrary to our old traditions is being attempted. On the contrary, my accusation against my friend and colleague Dr. Ambedkar is that as he is growing old and old, he is growing less and less enthusiastic about social reform. Ten years ago,

I think his language would have been more vitriolic ; today he is the very soul of moderation. He said the other day, "Anyhow, with something changed here, something cut off there, and something added or substracted, let me see the Hindu Code through because it will be considered at least one honest attempt by the present generation to put matters right". He is so anxious. He is in a mood to be prepared to give and take. I would therefore urge on the Members who are keen on opposing to see whether that is not a situation which we should avail of. I warn you that the next Parliament which will be elected on adult franchise is bound to be more radical in the matter of marriage and divorce……..

Some Hon. Members : Leave it to the next Parliament.

Shri Gadgil : …….although it may not be so radical to begin with in the matter of property. As regards, marriage, as regards divorce, I have not the slightest doubt, at least to the extent I know the mind and general outlook of those who inhabit my part of the country, Maharashtra.

Shri Bhatt (Bombay) **:** Leave it to the next Parliament.

Shri Gadgil : We would have welcomed it. I would have agreed to that if there had been no duty cast upon us to see that whatever ideals and objectives are embodied in the Constitution should be given effect to as far as possible. It is because of this duty. I have agreed to support this code.

Shri Bhatt : The skies are not failing today.

Shri Gadgil : Will the heavens fall if it is passed ? The sky is above and we are below. See what things are happening down here.

Shri R. C. Upadhyaya (Rajasthan) **:** That is why it does not rain.

Shri Gadgil : Now Dr. Syama Prasad Mookerjee asked. "Why monogamy only for the Hindus ?". I ask one question. If monogamy is a good ideal, does it become bad because somebody else does not follow ? We talk of *Ram Rajya*. If there is anything in the life and career of the Great Rama, it is his *Eka Pathni Vrath*. I want to test your sincerity. Are you for *Ram Rajya* ? Then, give support for this part at least. It is no good talking about *Ram Rajya* when it suits you for election purposes and when it does not suit you....

Shri R. K. Chaudhuri : What about *Dasaratha Rajya* ? What did Dasaratha who was the father of Rama do ?

Shri Gadgil : That is only an improvement by a new generation over the old. Because he knew the troubles of having three mothers,

he decided that his sons should have only one. That only shows how things progress.

An hon. Member : Was there divorce ?

Shri Gadgil : There was that custom.

नष्टे मृते प्रव्रजिने क्लीबेच पतिते पतौ ।
पतिरन्यत् विधीयते ।

[When the husband is lost, dies, goes to another land, becomes impotent or morally degenerate, another one is allowed.]

This proves it.

Dr. Syama Prasad Mookerjee's argument was that if it is good, let it be made applicable also to the Muslim community. I have no doubt that the Government either this or the Government that will come in . power after the General Elections will not shirk to bring in a measure of that kind in which this particular law will be applicable to every one irrespective of religion.

Some hon. Members : Why not now **?**

Shri Gadgil : As a matter of fact, I know that in Bombay, when the bill for Monogamy was under discussion, the same line of criticism which was adopted by Dr. Mookerjee yesterday, was taken by many a Member in the Bombay Legislative Assembly. I remember that the Government of Bombay stated through their Minister that a Bill of that character would be welcome. Dr. Syama Prasad Mookerjee somehow or other thinks that this Government is nervous and may not bring some thing which may offend the Muslim community. I ask him just to consider if 90 per cent, of the people in this country, who are Hindus, agree to this measure, will it or will it not strengthen the hands of the Government to pass a legislation for the remaining ten per cent ? By accepting this, you will strengthen the hands of Government. I might here mention one instance which I am sure you will recall: not you particularly. In 1930, when the first Child Marriage Restraint Bill was under consideration, to which subsequent amendments were moved by my hon. friend Mr. B. Das in 1936, when the original Bill was under discussion in this very Hall. Mr. Jinnah supported it, although the rest of the Mohammedan leaders who were Members here opposed it, on the ground that it was interference with the personal law of the Muslim community. His words are, if there is a conflict between religion and public morality, the latter shall prevail, Mullahas or no Mullahas. You can find this out from the reports of the Legislative Assembly proceedings that this was his stand. If we are convinced that to have

more than one wife is again public morality, I think, we must agree to monogamy. Monogamy in the first attempt at rationing in the social sphere so far. It is necessary in the highest interests of the community, in the highest interests of individual happiness that there must be monogamy and I have not the slightest doubt that the progressive elements in the Muslim community will accept it immediately. If the non-progressive does not accept it, it will equally be the duty of the Government to enforce it. I have no doubt about that, and if I ever am in that government, be assured that I will do my best to enforce it. That is so far as my personal attitude is concerned. My point is, if that is *Amrit,* because it is not taken by somebody else, does it become poison ? I think this is an insult to the intellectual greatness of this House to argue on these lines.

Coming to the question of divorce, nobody argues that every married couple should go for a divorce. At the same time, if it is the duty of the State to see that there is less of social tension, and efforts are made to create an atmosphere in which every individual will have the right to have maximum satisfaction and happiness, then, it is the duty of the State to create conditions for having judicial institutions or legal institutions of that character. Eighty percent, or more in this country have something like customary divorce. They are not worried. But, in the five per cent, or ten per cent, or whatever the percentage may be, on account of marriage conditions or on account of several other factors,—probably the modern woman is more intellectual—if she for one reason or another finds that it is not possible to live with a man whom she has married, then, marriage should not be a life sentence. It should not be that there will be no happiness unless one of them dies. No doubt, such cases may be few but the exceptions are there. Therefore, there must be some provision made for the same. You may make it strict; you may not make it as cheap as in the West, but speaking for myself, this is the most orthodox and reactionary law that you are laying down. Left to myself. I would have said that incompatibility of temper was enough ground to dissolve the marriage. After all, what is the assumption under the provisions for divorce ? It is that the parties cannot be happy. Should they go through this tortuous process of adultery or alleged adultery or cruelty or desertion ? What is the idea ? Should they always go to a hotel and have evidence of hotel bills, etc.? I think it must be a straight and honest and genuine affair that those who cannot agree, let them part. That will secure maximum happiness. People think

that this will end society. But if this custom is available in 90 per cent. of the population and in spite of that society has continued to progress all these generations, I do not think the extension of it merely to the remaining five or ten per cent, is going to change the integrity of society. On the other hand, the consequences that will follow will all be for the good. In fact restricting marriages and all the old injuctions that you must not marry in the same *gotra* have good reasons behind them. These restrictions were due to considerations of eugenics. If that is the case with those injunctions, then these will have greater application if the boy or girl marries outside the caste. Then there will be greater virility in the race, better type of persons will come into existence. This is a matter which must be considered in an atmosphere of scientific understanding. This is not the time nor the occasion to dilate on this aspect of the question. I will only add that behind these injunctions against marriage between *sapindas* or *sagotras* there were eugenic considerations. They must be reassessed.

Shri A. C. Shukla (Madhya Pradesh) **:** An old man marrying a young woman, is it according to eugenics or not ?

Shri Gadgil : You should certainly stop an old man marrying a young girl.

Shri A. C. Shukla : What will be the position of the child born to an old man and a young woman ?

Shri Gadgil : It will be as healthy as possible.

The point is, all those laws or customs which definitely have affected the progressive character of Hindu society ought to go. Dr. S. P. Mookerjee made a reference to *Brahmo Samaj, Sadhanan Samaj*. From Raja Ram Mohan Roy, to Ranade, Tilak, Agarker there is a galaxy of social reformers of whom we are all proud. But why should the process stop there ? If what was done in the past was good we ought to follow? the same principles of progress. And if we follow that same line of advancement, why should you be afraid now ? Why should you think that because Manu was great, therefore there cannot be any man as great as Manu in the centuries that may roll after his death ? I think Mr. Ahmad is as great or as good as Yagnavalkya, only without a *jenuva*. Otherwise he is as good an interpreter. And Dr. Ambedkar is as great as Manu or Gargya.

An hon. Member : He is Manu.

Shri Gadgil : And I am as good as any other old citizen. And why should we feel that the present generation cannot undertake the task of

social reconstructions ? India could not be an integrated unit under one flag during ten or eleven centuries. But if that task was achieved by this generation, is not this generation competent to do something in the social sphere to make society progressive ? I want an answer to that question. You praise us and praise yourselves for having done something great in the political sphere. Why are you afraid of achieving something in the social field ? Why do you have this inferiority complex ? Of course what was done by Manu was good. But—

"तातस्य कूपोयमिति ब्रुवाणा
क्षारं जल कापुरुषाः पिवन्ति"

Because this well was dug by my great-great grand-father, and although the water of it is saltish, I must drink it. Well, that is not my outlook.

Shri R. K. Chaudhuri : Then why not throw away your sacred thread ?

Shri Gadgil: I have thrown it away. Look here.

Pandit Malaviya : I believe the Hon. Minister puts it on now and then whenever he feels like it !

Shri Gadgil: No, nothing of the kind. And since it is a matter concerning me, you will kindly permit me to dilate on it for a moment.

Shri Brajeshwar Prasad (Bihar) **:** Sir, on a point of order. Is it parliamentary for the Hon. Minister to show the House his tummy ?

Shri Gadgil: Well, it was appreciated anyway.

Mr. Deputy Speaker : I am glad this point was raised. I can only say that it is not proper for questions to be put whether a person is wearing this or that, leading to unnecessary complications.

Shri Bhatt: I want to know one thing. Can he have *Yagnopavita* at the time of *Yagna* ?

Shri Gadgil: I am prepared to satisfy the curiosity of the hon. Member.

Mr. Deputy Speaker : The Hon. Minister need not discard his *Yagnopavita* to support the Bill. He can have it and still support it.

Shri Gadgil : Some years ago when I was in Thana Jail and when I started thinking about Hindu religion, I thought I was not a good *Brahmin* and could not be one merely because I had a *Jeneu* and I discarded it. And only when I am a good Brahmin, even for a moment, I will put it on, and this I did when I attended the Somnath installations ceremony. Then I felt a moment of inspiration. I felt my whole being ennobled when I was there and I put it on for sometime. Later on I threw

it away because I came from Heaven to the dust below. I shall only justify a *Brahmin* using the *Jeneu* if he is following all those great ideals which are enumerated in the Gita.

अभय, अहिंसा, अस्तेय, आर्जवम्

(fearlessness, non-violence, not to commit theft and straightforwardness) etc. Otherwise there is no good having a *Jeneu* and doing all sorts of things.

The point is whether we are competent to make any changes, the whole history of Hindu society shows that it is continually progressing from stage to stage. Otherwise how do you explain the numerious *Smritis,* one *Smriti* laying down one thing and another *Smriti* another ? How do you explain this ? Society is continuously progressing and something has got to be found which is appropriate to the *Sadachara* or *Vyavahara Dharma.* And the definition of *Sanatana* Dharma, as given by a great Shastri is :

सनातनः नित्य नूतनः

[The eternal is always new.]

Change is the watch-word of Nature. Change or perish. We have a progressive society and it is a dynamic society, as was pointed out by Dr. Mookerjee and so we must continuously adapt ourselves to the changing circumstances. Of course, that does not mean that there is nothing steady or nothing stable.

Pandit Maitra : Where in Sanskrit literature is the word *Sanatana* defined as the Hon. Minister has just now given out ? *Sanatana* means……

सदाभव इति सनातन : It means eternal.

That is the etymological meaning of the word. That is the grammatical meaning of the word.

Shri Gadgil : I am not prepared to accept the grammatical interpretation of the word *Sanatana.*

Shri Bhatt : Kaka Sahib can have his own interpretation.

Shri Gadgil : That is not of lesser importance. Kaka Sahib also knows some Sankrit. The point is through out history, there is the Hindu community the tendency to progress. Why should we stop now ? Modern conditions require that changes should be effected by legislation and not by custom. If to-morrow something else is required, the leaders of the day, through the Legislature, will effect that change. I agree that this a matter which must be considered in an atmosphere of calmness and understanding. If we agree that there are certain evils, why should

we not remove them ? I remember while speaking on the amendment Bill of my hon. friend Shri B. Das regarding the Child Marriage Restraint Act. I gave figures from the 1931 census and said that there were 1,300 widows below the age of one year. Is not that an evil ? And girl widows below the age often there were millions. And if you prevent them from re-marriage, just consider what will be the effect of it on society ? And only good has come out of the legislation that was passed. Today the position is that the average marriage age has gone up considerably. The problem now is not of marrying earlier, but of marrying at all.

11 A.M.

There was threat of opposition to this measure in 1930 and so great was me threat that all the communites were combined against the messure. I remember the description given at that time ; that before the Act was brought into operation thousands of children were taken from Calcutta to Chandernagore and married there, because it was not part of Birtish India, that thousands of children were taken in the midstream of the Indus and married, because there was no extraterritoriality so far as this Act was concerned at that time. This element of extra-territoriality was incorporated at the suggestion of Mr. B. Das. The point is that there are undoubtedly evils about which there is no dispute and it is not anybody's desire to nurse or keep those evils going on. As to whether the remedy should be stringent or less stringent is a matter on which the Members of the opposition can certainly have a discussion with my Hon. Friend Dr. Ambedkar and a *via media* found out. What I suggest is let this House take some steps towards progress and let us go down in history that in spite of real or created opposition this House had the courage to take at least one step towards the reform of Hindu society. That would be the greatest tribute to you individually and collectively and I do hope the whole House will rise to the occasion. That does not mean that you should accept whatever is suggested nor that you should reject everything Let us not have a closed mind : let us have an open mind. Let us agree that there is evil in society and let us agree that some remedy must be found. This is all that I have to say and I do hope that in that spirit the House will respond to the Hindu Code introduced by my Hon. Friend Dr. Ambedkar.

Mr. Deputy Speaker : Before I call Pandit Kunzru to speak I might say that I have been hearing speeches as if on the first reading and not on clause 2 which is before the House. Clause 2 consists of four sub-clauses and the amendments refer to them. Not many Members have addressed themselves to the clause proper. Evidently they want the

House either to accept the option or reject the measure. In fact I thought at one stage of accepting closure today……

Several Hon. Members : No, no.

Pandit Maitra : It is a most important clause, the very life-blood of the whole Bill.

Dr. Ambedkar : I am prepared to accept closure even on the tenth day.

Pandit Maitra : Do it on the 15th day. You make its application optional and we will pass it straightaway.

Mr. Deputy Speaker : On this clause at an earlier stage about 17 or 18 members have already spoken.

Shri Naziruddin Ahmad (West Bengal) **:** All that has been forgotten entirely.

Mr. Deputy Speaker : That is why I have allowed references to all clauses. The discussion has been on the details of the Bill as a whole and not absolutely confined to clause 2. We must see to the end of the discussion some time. I therefore, request hon. Members to confine themselves to those matters which arise out of clause 2 and the amendments to the clause. I do not want to curtail discussion but this kind of discussion will be endless. It so happens that whenever I call upon Pandit Kunzru to speak I have to make some suggestions to the House but they are not intended for him particularly.

Shri R. K. Chaudhuri : The Hon. Minister who spoke just now has to be answered and should we not follow him ?

Pandit Maitra : We have now been told that this Bill will be proceeded with in regard to its first two parts. You will realise easily that clauses 2 and 4 are the two fundamental clauses in the whole Code. After passing these two you can go ahead at the speed of the Frontier or Punjab Mail. The main point is the question of the applicability of the law to the communities mentioned. You should not be carried away by the mere fact that 16 or 17 Members have spoken. You are going to legislate for 30 crores of people and therefore a momentous measure like this has to be given serious consideration. If the Bill has been taken spasmodically now and then it is no fault of ours. They introduce it and at one stage when they meet with opposition they put it by. Then they gather strength and come back again. That is no fault of ours. If they had taken it up in a special session the House could have devoted its whole time and we would have been in a better position to know what we said on one day and what are our contentions now. It is not the old bill before us : It is a new thing that has come before us.

Sardar B. S. Man (Punjab) **:** Since you, Sir, mentioned the closure motion and there is the threat thereof may I request you that those Members who have moved amendments as regards certain communities should be given their chance so that they may explain their view point. I hope closure will not be accepted by you till we have had the chance to speak, that is those of us who have moved amendments.

Mr. Depty Speaker : My difficulty was that I looked up for those gentlemen who had tabled amendments. Others who had already spoken with respect to their amendments I did not call. I picked out four of the hon. Members who had tabled amendments and had not spoken so far. I was looking round for them to stand. The whole of yesterday none of them got up from their seats. Therefore they cannot say that no closure can be accepted until they are called to speak, if they are not inclined to stand up. Today the hon. Sardar B. S. Man sent me a chit saying that he was anxious to speak, because yesterday he did not catch my eyes……

Sardar B. S. Man : Even yesterday I stood up.

Mr. Deputy Speaker : The general principles of the Bill have been already discussed fully in the consideration stage. With respect to this clause, whether it ought to apply immediately or it should be optional are matters with regard to which amendments have been moved. But going into the entire frame-work of the Bill and whether it ought to be accepted or not on the analogy of some other pieces of legislation, are not, I think, quite relevant.

Shri J. R. Kapoor (Uttar Pradesh) **:** So far as I am concerned I did not stand yesterday to catch your eye in deference to your direction or view that you would like to give an opportunity to those who have moved amendments after those who had not spoken on the previous occasion. That was my reason……

Mr. Deputy Speaker : Even if he stands I do not propose to call him.

Shri J. R. Kapoor : Not even in respect of the new amendments I have moved ?

Mr. Deputy Speaker : I have tabulated all the amendments now and they have been circulated. No new amendment has been given by the hon. Member: they are only repetitions in another form of the amendments he had already moved. After I finish with the others I will consider those who have already spoken. But as a rule I would not like

to allow any hon. Member to speak, who had spoken already. Somehow Dr. Deshmukh was called yesterday when I was not in the Chair. If I had been here I would not have called him.

Shri J. R. Kapoor : My amendments fall into two categories : one old and the other entirely new.

Mr. Deputy-Speaker : I shall come to that later, after others have been given an opportunity.

Shri Bhatt : Sir, excuse me. I am sitting opposite to you but am not catching your eye. I have been getting up since yesterday. You said that those who have given notice of amendments did not stand up. May be, there is some forgetfulness on your part.

Mr. Deputy Speaker : Order, order, the hon. Member need not cast aspersions, that I had not seen him or I did not notice him. Hon. Members have no patience to sit and await their chance. When they come they expect to be immediately called and if they are not, they go away to the lobby. You cannot expect me to bear all this in mind. When I make up my mind which hon. Member to call next and if he is not in his seat I am entitled to ignore him. I cannot call them by the order in my mind one after the other. That is not the practice even in the House of Commons. I did not find the hon. Member standing up when I was in the Chair. I have a note here. I made a note of those Members who have not already spoken but have tabled their amendments. But they have no patience to sit here and the moment they are not called they go away to the lobby.

Pandit Maitra : There is absolutely no dissatisfaction at what you, Sir, have done. I want to assure you that we have the feeling that we are all getting an honest and fair deal—absolutely impartial deal—from you. We have no feeling against the Chair.

Pandit Krishna Chandra Sharma (Uttar Pradesh) **:** May I suggest that the words used by Shri Bhatt may be withdrawn ?

Pandit Maitra : He never meant any objection.

Shri Bhatt : With your permission, Sir, I want to clarify the position. All I wanted to bring to your notice was that I have been standing, but perhaps you did not notice it.

Mr. Deputy Speaker : I shall come to hon. Members who have not spoken and who have tabled amendments next.

***Pandit Kunzru** (Uttar Pradesh) **:** If I may say so, I agree with you. Sir, that we expected that the debate on the clause. But important questions of concerned with the merits of the clause. But important questions of principle were raised yesterday and I see that the minds of hon. Members are coloured by what was said in the course of yesterday's debate. It is therefore unfortunately necessary to say something on these points so that the prejudice created agains those parts of the bill that we are going to discuss may be removed.

My hon. friend, Shri N.V. Gadgil has dealt admirably with some of the points that were raised yesterday, and I venture to say something more on this subject because I feel that what was said yesterday ignores not merely the spirit of Hindu Law but the changes that are already taking place in Hindu society. In considering the Bill before us it is not enough that we should confine our attention to the provisions of the Bill. It is necessary that we should understand the character of the society for which we are legislating ; Its most important character is change; it is in a state of transition. To mention only one important factor that is vitally affecting our society, a great deal of awakening has taken place among our sisters during the last twenty-five years. They have happily become conscious of their just rights and they are making organised efforts in support of their just demands. It is partly to the credit of these educated and enlightened women that this Bill has been placed before us. But we have to add to this the fact that education is fast growing amongst women……

Shri R. K. Chaudhuri : You mean Western education ?

Pandit Kunzru : The education that you have received and in spite of which you claim to be a good Hindu. Our sisters are receiving the same education and there is no reason to suppose that they will become denationalized or adopt an attitude of disrespect towards their religion or culture. Our women are receiving education in ever-increasing numbers. They will enjoy the franchise on a footing of equality, complete equality, with men. Is it conceivable that in a society that is being moulded by such forces inequalities between men and women will be tolerated for any length of time ? Those who use the name of religion in order to defend social ineuqalities and social injustice are doing the worst service they can to Hindu religion. There is nothing, I venture to say, in those provisions of the Bill that we are going to discuss

*P. D. Vol. XV, Part II, 18th September 1951, pp .2772-77.

in this session that is in any way in conflict with the best principles of Hindu Law or with the spirit that has always underlaid it.

What are the main features of the bill so far as we are going to discuss it now ? They are monogamy and divorce. As regards monogamy, my hon. friend, Dr. Syama Prasad Mookerjee said realistically yesterday that in view of what had taken place in the past it was too late today to contend that this Parliament was not competent to undertake legislation in respect of social reform. He also said that he would be prepared to support monogamy if the Muslims were brought within the purview of the Bill. I remember distinctly that when the general principles underlying the bill were discussed, some speakers expressed the fear that Hindu society was being compelled to imitate the Muslim society in respect to inheritance. We know that among Muslims daughters have a share in the father's property. Yet, we were not in favour of assimilation between Hindus and Muslims in this respect. What right have we now to ask that no legislation should be undertaken in respect of Hindu marriage unless it applies as much to the Muslims as it will do the Hindus ? People who are not prepared to allow women to have a share in the property of their fathers have no right to ask that the law relating to marriage that is applied to the Hindus should in all respects be applicable to the Muslims also.

The arguments that have been put forward now were carefully considered by the Hindu Law Committee. I should like to remined the House of what this Committee said with regard the objections that had been urged after considering them one by one, it came to the conclusion that they were either far-fetched or had no relation to existing facts and then said:

> "We have accordingly decided to retain the provision for monogamy in the draft Code. It will prevent the husband from deserting the wife at will and contracting a second marriage. There is a substantial body of evidence before us that cases of desertion and re-marriage are increasing and this problem is best solved by enacting monogamy as a rule of law."

I think that the observation of the Committee has great force and those who oppose monogamy on any ground must deal with the concrete reasons put forward by the Committee in favour of proposing monogamy. The Committee drew attention to the fact that monogamy had been enforced by law in the State of Bombay. Legislation was undetaken there four or five years ago to prevent polygamy amongst

Hindus. We can now say that there is a similar law in the State of Madras. Indeed the State of Baroda where there was a Hindu ruler and whether the large majority of the people were Hindus passed a law many years ago in favour of monogamy and divorce.

Shri D. D. Pant (Uttar Pradesh) **:** The Ruler violated it.

Pandit Kunzru : If the Hindus in all these places have violated Hindu Law, then where can you find real Hindus—only in this House ?

It was yesterday that the demand was put forward that the Bill should be made permissive, that is, the enforcement of the provisions should be left to the States. Now, here are two important States in which the principle of monogamy is already in force. There are other parts of the country also, for instance, the district of Malbar and the State of Travancore-Cochin, where legislation has been passed to prevent polygamy amongst Hindus. In view of this and in view of the fact that it was freely admitted in the debate yesterday that in a large majority of cases, in an overwhelming majority of cases, the marriages were monogamous, on what ground can anybody now ask that provision relating to monogamy should be made permissive ? This is the only provision of the bill that is not permissive but compulsory, and it is compulsory for a very good reason. It will be compulsory, but that principle appears to have been accepted by Hindu society at large. In those places where it prevails Hindu law has not been subverted. There are as good Hindus there as there are amongst the Hindu Members of this House. I think therefore that my hon. Friend Dr. Ambedkar is on strong ground when he asks that we should lay down as a rule of law that monogamy should prevail amongst the Hindus in this country.

The next point that I should like to deal with is divorce. Here too it is asked that the provisions should be made permissive. But they are already permissive. Unhappy couples will not be under a compulsion when this law is passed to rush to a court of law and ask for immediate divorce. It will depend upon them whether they will take advantage of the provisions of the law. What more can be done in order to remove fears and in order to enable only those people who find the existing conditions intolerable to seek either separation or complete divorce ? The Hindu Law Committee, dealing with this point, said :

> "From the evidence adduced before us we should think that there are thousands of women in British India who have been deserted by their husbands."

Then it goes on to say :

> "Many hard cases were also brought to our notice by other witnesses in which re-marriage was both desired and possible but could not be effected by reason of the existing law. The number of these cases may not be relatively large and reckoned in terms of percentage the problem may not appear to be a formidable one. But as we have already stated there are thousands of such cases in India and if even a small proportion of these women desire a divorce with a view to getting themselves remarried the question is whether the law should say upto them 'nay'. Evidence was brought before us that in many cases re-marriage is quietly celebrated and that society tolerates and recognises such remarriage."

Here, again, the facts are incontestably against the view that there is no need for having a provision for divorce in our marriage law. No one is compelled to take advantage of it. There is no reason why for the sake of the patient sufferers, those who seek relief should be denied. I have already referred to some of the States where monogamy is legally in force. I may add that the law allows divorce in all the States mentioned by me in respect of monogamy. Now what has happened to Hindu society there ? Has the sanctity of marriage become less than it was before ? Do not the Hindus there regard the tie of marriage as a sacramental tie ? Have they no respect for Hindu religion or Hindu culture ?

Pandit Maitra : The sample is here.

Pandit Kunzru : I should very much like to see a discourse between my hon. Friend Pandit Maitra and the people of the States mentioned by me on this point. He will not find it easy to convince them that they are inferior to him in their regard for Hindu culture and Hindu society.

Pandit Maitra : Then leave it to individual areas to legislate : why force it here ?

Pandit Kunzru : I have already pointed out that there are so many areas in which this law is in force. In the second place I have taken pains to point out that the provision will be permissive. What do you mean by asking that it should be permissive ?

Pandit Maitra : Make it optional for all.

Pandit Kunzru : It will be optional for unhappy partners to seek relief under this law or not. Nobody is going to compel them either to separate or to seek divorce. What more do you want ?

The law in Baroda has probably been in force for a much longer time than in the States of Bombay and Madras. But it appears from the evidence given before the Hindu Law Committee that both in 1940-41 and 1941-42 the number of suits by persons belonging to castes in which custom does not allow divorce was three only. My hon. friend Dr. Syama Prasad Mookerjee said yesterday that if 90 per cent, of the people could already get divorce, where was the need for bringing the remaining ten per cent, who were following a higher law and who regard marriage as indissoluble. Well, I am sorry that he is not in his place. But I should like to point this out to him.

Besides, we all know what is happening in Hindu society. If a husband drinks and beats his wife, or deserts her, is this a sacramental act ? Is this in accordance with the sacred character of Hindu marriage ? An hon. member behind me ask : "Why not check it ?"

Pandit Maitra : There are also wives who beat their husbands.

Pandit Kunzru : I do not say that the wives are impeccable. Wives have their own faults, but the law will apply not merely to wives but also to husbands. In view of this it is idle to claim that the upper strata of Hindu society, that is men belonging to the *Brahmin, Kshatriya* and *Vaishya* castes have a higher ideal than the members of the other castes.

Again, it has been said that this Bill has caused a great deal of perturbation in Hindu society. I find that this is due to the fact that people are misinformed with regard to the provisions of the Bill. When the provisions are explained to them a good many of their misapprehensions disappear, and I have no doubt that if those who assiduously voice the fears of the people in this House will take a little trouble to explain what its provisions really are.....

Pandit Maitra : Let the government do it.

Pandit Kunzru : .....much of the dissatisfaction that exists will disappear.

Government is doing what it can to spread a correct knowledge of the provisions of the Bill, but is it not the duty of those people who believe in truth and in the spirituality that underlies Hindu law to take a hand in this good work ? Why should they not seek to remove the prejudice that has been wrongly created against the Bill**.**

Pandit Maitra : Leave it to them to decide.

Pandit Kunzru : My hon. Friend disregards facts completely. I confess that I am powerless to convince him....

Pandit Maitra : It is my misfortune also.

Pandit Kunzru : .....if he continues to shut his eyes to facts.....

Pandit Maitra : I am looking straight at them.

Pandit Kunzru : .....and says that nobody in India has before the introduction of this Bill ever heard of the words monogamy and divorce.

Shri R. K. Chaudhari : Monogamy means monotony.

Pandit Kunzru : I think that those who are supporting the principle that underlies the provisions that we are considering, who are trying to bring about complete equality between men and women, who are trying to renovate Hindu society, who are asking it to go back to the great principles that once made it great and the envy of the world, are rendering the greatest service they can to Hindu religion and culture. I hope that they will persevere in the path they have chosen themselves and make Hindu religion as respected throughout the world now as it was some centuries ago.

***Shri Bhatt :** *(English translation of the speech)* Sir, I am being asked to speak in English, but as ill luck would have it, I cannot speak in English. I cannot express my ideas and feelings as suitably in that language as I can in Hindustani. I may be excused for that.

Shri R. K. Chaudhari : Sir, we do not understand high-flow Hindi and we cannot follow if the hon. Member speaks swiftly. We can understand if he speaks slowly.

Shri Bhatt : I have not taken the floor simply in order to reply to what the Hon. Minister has said, but I am here to express my own ideas. We are going to perform a big task and curs is a Herculean endeavour. We are descendants of Bharat and Bhagirath, Rama and Krishna, Manu and Yagnavalkya. The systematisation and codification of Hindu Law in such a way that we may be in a position to apply, it to our lives, is a Herculean effort. As Shri Gour has said about England:

> "Various attempts have been made to codify the laws of England but the attempts have so far failed."

England is a progressive country and yet its laws could not be codified. In our country where there are so many complications and anomalies and customs have a very heterogeneous character, the magnitude of our task is indeed great. As Hon. Minister Kaka Sahib Gadgil said, if we do not perform this task, how would we be able to

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bring the divine Ganges and Yamuna to the plains as Bhagirath did ? I congratulate him on his courage. We also want to help him and not impede his efforts. I want to say that things should be done at an appropriate time and by suitable methods. I do not say that Hon. Pandit Kunzru wants to deprive the Hindu *Shastras* of their sanctity and importance but at the same time I do not like that we should drift towards materialism and see things only from the point of view of our convenience. We do not want to make his law only to prove its ineffectiveness in the long run. Our Hindu *Shastras* have also been amended. Today they call Dr. Ambedkar as Manu, Shri Gadgil is called Yagnavalkya and Shri Gadgil can give any such name to Shri Naziruddin Ahmad also.

Shri Syamnandan Sahaya (Bihar) **:** Call him Narad.

Shri Bhatt : It is difficult to say today whether we have made any progress or have gone back. I would say that from the point of view of food, clothing and living, we have the same standard which our ancestors had during the Mughal period. Is our standard of living the same as obtained 150 years back ? Do we have the same facilities which we had thirty years back ? Applying this standard, we can not say that we have progressed. Can we say that we have made progress simply because we have passed more laws ? Or shall we say we have progressed as we have become more healthy and courageous and have become true Aryans ? This is a difficult question ; I cannot answer it nor have I the time to do so. It is a new subject and I do not want to go into its different aspects. I shall try to confine my remarks only to my amendments and clause 2. Our *Smritis* and *Shastras* have kept changing according to times. I agree with the Hon. Minister in that we have our *Dharma Shastras.* Shri Maitra may interprete them in one way. Shri Gadgil in another ; Dr. Ambedkar may ex-pound them in his own way and my interpretation may be different from those of all these gentlemen, though I am not a scholar of *Shastras;* all I want to say is that our religion, our *Smritis* and our *Shastras* are eternal. Changes have taken place in them and new things have been incorporated in them at times changed. They change with time and place and never lag behind. Without showing disrespect to the scriptures of any other religion or community I want to say that the Hindu *Shastras* and tradition live to this day ; that is why Hinduism has kept place with time. It is in that sense that I consider them as eternal.

Pandit Malaviya : After the code has been passed it will not remain so.

Shri Bhatt : We don't want to frighten them. I remember that the Hindu Code Bill Committee prepared a draft of the Bill and it was presented to the House in April, 1947. In the statement of Objects and Reasons was this sentence : "There is a growing public opinion in favour of codification and a uniform code." Beides this our hon. Kaka Saheb Says, "It is difficult to say which side is stronger"

Mr. Deputy Speaker : In the Official Report it will be difficult to understand who "Kaka Saheb" is.

Shri Bhatt : I admit the truth of what you say. As Kaka Saheb *i.e,* the Hon. Minister Shri Gadgil said just now and others said yesterday, that the English knowing people and even those who do not know English but have progressive views, agree to this. But if this is true, why do so many demonstrations take place against this Bill ? Both sides demonstrate. Abound the Parliament House, those who are in favour of the Code Bill and those who are against it, both of them demonstrate. I know both sides have scholars and intelligent people among them and also men and women.

Dr. Ambedkar : They are all lunatics. They are out because our lunatic asylums are too small.

Shri Bhatt : Then Hon. Dr. Ambedkar says that those who are opposing the Bill are lunatics. I beg to submit with respect that I want to stand against this statement. If you call them lunatics, they would call you a hundred times bigger lunatic. I want to emphasise that if a person calls his opponents lunatics, he is living in an age with which we are fed up. During British Rule, such Government was here as neither listened to, nor tolerated what others thought. I don't agree to Dr. Ambedkar's statement, who has been compared to Manu, that his opponents are lunatics and are out because our lunatic asylums are too small. I agree.....

Shri R. K. Chaudhari : May I say that we are losing all the humour because the hon. Member is speaking in Hindi. Those who know Hindi understand but we are not following him at all.

Pandit Malaviya : It is not humour but grim humour.

Pandit Thakur Das Bhargava (Punjab) **:** My hon. Friend does not understand, otherwise he would be somewhere else according to Dr. Ambedkar.

Shri R. K. Chaudhari : I understood Dr. Ambedkar to say that those who were opposed to this Bill are mad. Is that in order ?

Mr. Deputy Speaker: He has not said so.

Shri Bhatt: I was saying that Dr. Ambedkar may hold certain views and ray views may be different. After 1947 this Bill was sent to a Select Committee, which presented its report in August 1948. After that this bill again came up for discussion. As you are aware sir, our Government does not want to hurt anybody, nor does it want to do anything which might create a sensation among the people. So our Government consulted *Pandits*. Dr. Ambedkar also listened to what certain *Pandits* had to say. He gave them an opportunity to put forward their views, though not to their heart's content, but they were given an opportunity all right. I do not know whether he accommodated their viewpoint or not, but after that he put forward something new and amended it. Now he is bringing forward new amendments every day and that is good ; there is nothing wrong in it. He wants that he should bring round his opponents, and taking their grievances into consideration, put forward an agreed legislation. With this idea in mind the Government have introduced this Bill and we are discussing clause 2 of the same. This Bill contains many different things, but if I have rightly understood, for the time being only two parts, *viz.,* those relating to marriage and divorce are to be taken up. If we are going to take up only one thing as suggested by Shri Gadgil, who has expressed the hope that it would demonstrate our might. I would request them to stop there if they have any idea of what is practicable. I repeat what I said in an earlier speech ; and that is the Government should wait till the next House is elected within four or five months. Those who will get elected to the next House, will put this question before their electorate, before the people. This has become a burning question and it will remain before them. Put it before the people and the members of the next Parliament will get a mandate from them on this question or will tell their electorates what they would do when they sit in the new House. While speaking on the Child Marriage Restraint Bill in 1929, Qaid-e-Azam Jinnah had said, "It is necessary that children under 14 should not be allowed to marry. If my electorate does not agree to this, I will resign from the House, and they may elect somebody else to represent them". We should be definite about what we want. The idea that we should not antagonise anybody, now that we have reached the last stage, should not enter our calculations. The best possible draft of the Bill should be put forward before us and we should clearly know as to how far we are to go. Why should you put only one thing before us ? We have to scrutinise every

clause. Dr. Ambedkar has become so impatient that he wants to bring forth a child, no matter if it is blind, devoid of limbs or unable to move. What he wants is a son so that he may have somebody to offer *Pindas* to him.

An hon. Member : So that he may get deliverance ?

Shri Bhatt: Pardon me. May he live for a thousand years ; I am speaking only figuratively. If Dr. Ambedkar and Pandit Jawaharlal feel so strongly about passing the Bill, we will bring round those who have been termed as lunatics. Use whatever methods you like to bring them round, to repress them, we are with you and may be we would also come under your influence but please refrain from passing a legislation that is incomplete, invalid and base. On the contrary it should be lofty. Why do you say that you do this and you do that just to accommodate us ? Don't do it if you think it is not right. If we are elected to the next House we will say with more courage that we are armed with the mandate of the people on this question and we are not going to bow to the directives of anybody else. We will bow only to the will of the people. I am a quiet man and do not wish to prolong my remarks on this point. A couple of days back I had occasion to go to a factory. People working there asked me what all this fuss about the Hindu Code Bill was. I countered that question With the remark as to why they were afraid of this measure. They said "This is going to put an end to our religion, there would be chaos in our society and we will deteriorate." So I had a talk with them. Many of them were intelligent people, who had read the draft Bill. We should not think that those who are opposing this Bill are doing so without understanding it. They referred to the provision about divorce and said that these days they can get divorce more easily according to the prevalent customs. "Why should you", they said, "drag us into the court and make us say that a woman is immoral and make the women accuse their men of adultery ? It is better to discuss these thing in our *Panchayats* and people who understand the truth about a particular couple will separate them." Now, this needs a lot of consideration. Will Dr. Ambedkar argue that divorce rules, wherever they operate are very lenient and should not be so because that will endanger Hindu religion ? Hindu religion is not endangered because of that. There are others who say that Hindu religion will be endangered if this Bill is passed. We have to tax our brains to see which side is right. Everybody has to think. Then I asked those people in the factory as to what else they had in their minds. Then they mentioned the problem

of the share of the daughter in her father's property. What I want to show is that those who are opposing the Bill are not lunatics and that they are not acting without intelligence. Some members of the *Adarsh Mahila Sangh* came to me and put the same question. Now they are also wise and reasonable. No doubt, the hon. Member Shri Renuka Ray, Shrimati Durgabai or other lady members are wiser and more well-read. But that does not mean that women outside this House do not understand the significance of things or, as somebody said, that they are mere blockheads. The ladies I referred to just now, started discussing and said that we should do nothing that may bring down the whole structure of society. We have opened a way by passing the Civil Marriages Act. Persons marrying under this Act can also give divorce. Why should we go further ? Let our customs remain as they are. We do not say that a certain person should not do a certain thing. Gradually people would begin to understand.

Shri Kunzru has spoken about monogamy. People don't have enough to live on. In many cases it is difficult to support one wife even, how can everybody support two ? Muslims are allowed to have as many as four wives, but has everybody four wives ? In very few cases, men have two wives and very rarely one has four. I could not obtain census figures in this respect. Our Statistics Department is still far behind. The question now is, how Muslims came to be allowed to have four wives at a time. Hazrat Mohammad fought the battle of Ohad in which a large number of men were killed. The result was a preponderance of women over men, for the protection and upkeep of whom those who could support upto four wives were ordered to take that number of women as wives. This thing has happened in Germany and France at different times. In our country there is more or less a parity between the numbers of men and women. The number of women is some thousands less than that of men.

(Pandit Thakur Das Bhargava *in the Chair*)

But if, unfortunately, the number of women goes up by two crores, a new legislation will have to be passed to meet the new situation. I am going into detail to show that our laws were made according to the demands of time and place and even now they are being made according to the same standards. Dr. Ambedkar wants a legislation of that sort but that legislation should have the effect of healing. In our country marriage is not a matter of convenience only. He may be of the view that marriage is merely a contract, pure and simple. These words have

been used by leading lawyers. But the basis of our society is not only materialism. Our society is based on our ancient *Shastras*—the *Shastras* pertaining to agriculture, zoology and sociology. From the point of view of genesis the horse and the ass, belong to the same genus, as all of us are human beings. But human beings differ in different countries. A person likes the same sort of climate and environment in which he has been brought up. The same is the case with other living beings. Take somebody from Hissar to a new place and see the reaction. Take the case of trees for instance. Can a tree from Kashmir thrive in Rajasthan ? Many attempts were made to plant mango trees in Rajasthan but they all failed. After all there is some principle behind it. Land, seed, water and climate, every factor has something to do with it. You can't plant a tree anywhere. The same is the case with marriages. You can't marry somebody to anybody. Even for trees one has to consider which tree can be grafted upon another. I don't want to go into details. My point is that our society is based on certain political, educational, hygienic, eugenic and sexological principles. If you want any proof of this, I will quote a portion of Dr. Bhagwan Das's long speech which he delivered while presenting his Hindu Marriage Validity Bill. In this speech he quoted many things from the *Shastras*. Dr. Bhagwan Das said :

> "The hygienic and eugenic and sexological principle is that every possible care and caution should be exercised and all possible cleanliness and purity secured in respect of food and marriage and that persons with similarity of tastes and habits and purity of temperament should dine together and marry together so that the individual and racial-health and happiness may be promoted."

I do not see much in eating and dining. Even before Gandhiji I did not believe in this. But if you ask me to dine with a fish-eater I would ask to be excused. I do not consider him an untouchable, but I have formed a habit. If somebody asks me to marry a certain woman....

Dr. Ambedkar : There are not so many fish that could be supplied to everybody.

Shri Bhatt : I was going through census figures and my friend Shri Sidhva and others may pardon me, when I say that I found from the census that many men marry at the age of 60 even. I, for one, do not want to marry.

I was saying that compulsion cannot be used in regard to our way of life. One's way of life should be according to one's own temperament. It will come about after some time, if not today. I am sure that Panditji,

in whatever he does, will have the country's interest before him ; that is why we consider him as our leader. We would not consider him as our leader if we did not have any faith in him. In the same way we believe that whatever our parents will do, will be allright for us. If we do not have any faith in them we will ourselves seek our mates but then we shall take into account our nature, habits and convenience. Our faith is based on these things and we should not make any such law as my create difficulties for the society, or spread discontent. After all, the object of every legislation is to make society happy and prosperous. But if people think that a certain legislation brings them disaster, bring them round to your point of view. If Dr. Ambedkar is so particular about this Bill let him address a meeting of a lakh of people and explain to them the benefits that will accrue from it. At the same time a *pandit,* an opponent of the Bill, should also put forward his point of view. If those one lakh people were to express their views by means of a secret ballot, may be that would satisfy you.

Shri Naziruddin Ahmad: That will be the end.

Shri Syamnandan Sahaya : Take a secret ballot in this very House and it will be the end.

Shri Bhatt: You are afraid and that is why you do not put it before the people. There was only one person, and that was Gandhiji who believed in putting everything before the people. He thought that untouchability should be abolished. The capatalists threatened to boycott him. When Gandhiji went to the Mulji Jetha Market of Bombay to collect money for the Tilak Swarajya Fund and asked for a crore of rupees for that fund, the capatalists said that they would give not one but five crores, only if Mahatmaji expunged the abolition of untouchability from his programme. Mahatmaji replied that on that condition he did not want even a single pie from them, not to say of five crores of rupees. He said that he would stand by his principles and march forward towards *Swarajya.* It is the duty of the Government to go to the people. We are ordinary men, have not studied the *Shastras* to any great extent. You have wisdom, go to the *Pandits,* to the Shankaracharya, who is opposing it, go to those women who are against it and whom you want to make happy and try to persuade them. I don't think that this Bill is going to benefit only the women. I do not consider this to be a Magna Charta for women only. You are trying to benefit the whole of the society and I thank you for that. You should bear this in mind that the subject under discussion is not new. Not to talk of 1942, in 1937 Dr. Deshmukh had introduced a Bill which brought this matter

to the foreground. In 1856 Shri Ishwar Chandra Vidyasagar and Raja Ram Mohan Roy brought about reforms like widow remarriage. These things have been going on. Authorities and commentators of our religious scriptures have writen different things about the subject. I don't ask you not to pass this legislation. But why are you doing it today ? Why are you so impatient ?

Please be good enough to wait for some time. General Elections are imminent and the new House will meet in May next year. At that time you may bring forward the best of legislations and pass it. Some of the present Members may again be elected and if I again sit in this Houser I will take part in the deliberations. But before that put the final draft of the Bill before the people and do not have an incomplete legislation and say—"Gokul Bhai, please get it passed". I do not want this. Give me something wholesome to eat. If you give me something dirty to eat or say that I should eat controlled rice, because nothing better is available. I won't have it. I will have something good to eat. It is another thing that hunger may compel me but if there is an alternative food I will prefer that. I would rather eat leaves of trees than eat anything dirty. So I request you to postpone this Bill. You have accommodated us to some extent and I want to thank you for that. I congratulate you on your sagacity because you have met the demands of time. But be more liberal and go a step forward. I would also ask my sisters what good would accrue to them if it is passed just now and how they would come to harm if it is delayed by four months. The skies would not fall, nobody would come to harm nor is there any question of monetary advantage if it is passed. That is why I am making this request.

I again refer to the talk I had with some people in a factory. They want the question of divorce to be settled according to custom. But what are Customs ? Customs have a great influence, even Dr. Ambedkar won't deny this. What I am opposed to is that you want to do away with our customs. That will not work at least for some years to come. If you want to take the backward classes with you you will have to slow down your pace. Only in that case shall we follow you. Mahatmaji was very progressive. When Shri M. N. Roy came to the Faizpur Congress and began discussing Communism with Mahatmaji, he (Mahatamji) said, I was not there. I am telling you what I came to know about their conversation—"Mr. Roy, say whatever you want to say in the strongest possible words about present day society and capitalists". Mr. Roy made a strong and lengthy speech. Then Mahatmaji said, "Is that all ?"

And after that Mahatmaji replied in a few words which took only some minutes. Mr. Roy was surprised and asked if Mahatmaji felt that way. Mahatmaji said—"You don't know me well enough. I shall put forward my ideas, as our society makes progress. I know our society is backward and many ideas have not developed to the extent to which they should have. But I have to carry the people along with me." That is why I say, however high the ideas and whatever happiness they might bring, what are you Dr. Ambedkar going to achieve with 15, 20 or 25 members of the Cabinet, if we are not with you. I see that many people belonging to the majority accept certain thing because Shri Nehru or Dr. Ambedkar has asked them to do so, but if I do it, who will follow me ? I repeat that I will be deceiving you if I did not tell you that people do not want it in this way. I don't want to deceive you. As we are your followers so are our electorate with us. We have to see to their good and convenience. It has been said, as you know, "*Shastra rurhi baliyasi" i.e.,* custom overrides the *Shastras*. After all, laws are made by men, so were the *Shastras*. When our customs have claims of precedence over *Shastras.,* why can't our society override our laws ? I ask you to take this into consideration.

There is one more drawback which I would like to point out. Shri Kunzru is not in his seat, I would ask Dr. Ambedkar to excuse me. We have become so thoughtless that when the westerners say that our marriage laws and ceremonies are very good, we will agree with them. "When Max Muller says that our *sastras, upanishads* and *vedas* are the best in the world, we take that to be true and quote him. But our own commentators and authorities have said the same things in a better way, yet nobody cares to go through their writings.

I have been just now told the copies of '*Yagnavalkya Smriti*' could not be available in the whole of Delhi city even on payment.

Dr. Ambedkar : I have got so many copies with me.

Shri Bhatt: If you have got the copies please lend them to us ; they are not to be found in the Library. *Sanskar Kaustuba* and *Yagnavalkya Smriti* could not be found in the Library. You have got all these things, you might have personally purchased them; you are thirsty after knowledge and a lover of learning ; not only that, you are a learned scholar and a *Pandit* as well. But please place those copies in the library for some time so that we too may have change to benefit ourselves by those books, and may be able to have the necessary information. I have never been impressed with the translation of Gitanjali done by

Yeats, because it has always been my endeavour, and I had made up my mind in this connection when I was at College, not to read Rabindra Nath's Gitanjali until I had learnt Bengali. I have always held that it is useless to read such a work without having the knwoledge of the language in which it was originally written. I have not been able to learn Tamil so far, but I would try to learn it, such has been my tendency from my early days. When I saw Gitanjali in original and its translation by Keats. I found a lot of difference. The translation did not contain anything worthwhile. Compared to it the translations in vernacular languages are much better. I have seen a more beautiful translation in Marathi done in *Abhanga* metre by some person under a pseudonym. But unfortunately we Indians generally close our eyes to those things which are our own and when somebody from outside throw light on them we exclaim 'Yes now we have seen'. I would like to ask after all what flood lights are opened before our eyes by the foreigners which dazzle our eyes and we begin to appreciate those things ? After all what are the defects in our own lights ? What do you think is missing in the lights that we have ? We should try to understand our own things in the right prespective and after a full realization should gladly make the necessary changes in them so that everybody may be satisfied and it may be in the interests of all.

Now, I come to the point as to what a Hindu really means and wherefrom has this word Hindu come ? Sir, you would excuse me if I would take a few minutes more to throw light on this. My submission is that I do not like to go into the historical facts nor do I want to go into Greek and Iranian histories. Neither do I want to go into the details as to what relations we had with Iran and Greece in the past; but I would only make an attempt as to wherefrom has this word 'Hindu' come. My amendment wholly relates to this very thing. One opinion about the origin of the word 'Hindu' is that there were two cities in *Gandharva* Desh, one of them was known by 'Hindas' from which the word 'Hindu' has been derived. The second opinion is that the word 'Hindu' is derived from the word 'Sindhu' the great river that we had according to Philology letter 'S' has changed into letter 'H' and in this way the word 'Sindhu' changed in to the word 'Hindu'. The word *Hinduani occurs* at several places. It is difficult to ascertain the source of this word. I visited Central Secretariat Library but found it to be too poor. I have never seen a poorer library than this one. I asked for books related to this matter but I was told that they had no special

collections on this subject, further adding that only some articles might have appeared in annual numbers of certain magazines here and there on this subject. That was all and there was nothing more in that Library. As against this, had I gone to the Royal Asiatic Society I could have definitely got some better and useful material, but, unfortunately. I did not find time to go there. Sometimes the Press Bill and sometimes this Hindu Code Bill and other things detained me here. Anyhow, I do not go into the details as to wherefrom has this word 'Hindu' come and what its origin actually is. But one thing need be kept in view that the word 'Hindu' means the people who inhabit this land of Hindu *i.e.,* the whole of Bharat. All the people living in this land are Hindus, whether you call them by the name *Arya* or *Dasyu*. There were only two classes of people inhabiting India in the past; one was known as *Arya* and the other as *Dasyu,* but in spite of this distinctional of them were 'Hindus'. Hence, I would like to know what meaning should be attached to the word 'Hindu' in the Bill which is going to be passed into an Act now. After all how many persons have been consulted as has been mentioned in the report and as was stated by Shri Kunzru ? How many persons have given their opinions and how many of them have been included in it ? But I do not want to bring in all those things.

Dr. Bhagwan Das, while discussing the Marriage Validity Act, explained as to who was a Hindu. He said that Hindu was not merely a nationality. When '*Shariat*' Act was introduced in the House most probably in the year 1937, his *sufi* friend gave the definition of a Musalman which I read out here. While introducing the Bill in the course of his speech he said :

> "Islam has scores of sects but the belief in Mohammed seems necessary for all, though I am told that some sects do not consider the second *part of Kalema* of faith as essential and indispensable and regard Mohammed as one of the many prophets sent by God to help humanity on earth."

While replying that point and repudiating that view Sir Yamin Khan (Agra Division) said :

> "There is no Muslim who believes in this. It is essential for a Muslim to believe in both the parts of the *Kalema,* namely *'La ilaha illallah'* and *"Mohammed Rasulullah".*

To this Dr. Bhagwan Das remarked "I have heard it from a *Sufi* friend". In reply Mr. Yamin Khan said : "Those who do not believe in the second part cannot be called Muslims."

In this way what I beg to submit is that I have suggested in my amendment that those persons, who have left Hindu religion and embraced any other faith but whose social customs are still like those of the Hindu Society, should be given the privilege to have this Hindu Code applied to them if they so desire. When Hindus are going to benefit by this Code why don't you allow others too to have its benefits ? After all what objection have you got to that ? There are some Indian Christians whose social customs are like those of the Hindus notwithstanding that they have embraced Christainity. As such why do you exclude them from its application, and why don't you allow them to have the benefits of the Code in the same manner as the Hindus would have ?

I, therefore, request the Hon. Doctor to keep all these things in view. Should I state which of the non-Hindu communities can benefit by it ? I do not want to go into detail, but I certainly want to draw his attention to it. Take for instance, Dr. Gour and Mr. Gupta who are great authorities on Hindu Law. They have given the names of those non-Hindu communities to whom this Code can apply. About Kutchi Memons…..

Shri Syamnandan Sahaya : You know it, he too knows it, but we do not know it. Kindly read them out.

Dr. Ambedkar : Do not be brief. But please read them out.

Shri Bhatt: The Memon Act which has been framed……

Dr. Ambedkar : Do not mind about the time, but please read them out.

Shri Bhatt: I am going to read it out. It is laid down in the Kutchi Memon Act:

> "Whereas it is expedient to enable those Kutchi Memons who so desire to be governed in matters of succession and inheritance by the Mohmmedan law, it is hereby enacted".

The operative section is :

> "Any Kutchi Memon who has attained the age of majority and is resident in British India may by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of the Act, and thereafter the declarant and all his minor children and the descendants shall, in all matters of succession and inheritance, be governed by Mohammedan law."

Shri Syamnandan Sahaya : It is an optional clause. So there is a precedent.

Shri Bhatt: So I hope the Hon. Minister of Law would keep some sort of provision in it in the same manner in which some laxity has been allowed in the above clause, otherwise you are only limiting its scope. The then Home Member Mr. Henry Craik made a mention of it in his speech and said:

> "I think it deserves very careful consideration, whether it is not wise in those matters to give the individual the option and not to compel him to accept a rule or law of which he may be imperfectly informed."

Shri B. Das (Orissa)**:** I think Sir Henry Craik was a bachelor—he did not understand society.

Shri Bhatt: I have taken this from the Debates of 1937 where it is given on page No. 2544 of Volume No 3. Hence, my submission is that we too should keep a provision of this nature in it. Look into the Baroda Act which all of us appreciate. Baroda is several years ahead of us, ask them now where they are at present. Ask them what facilities they enjoy and from what difficulties they suffer, and how they enforce their various laws. They might perhaps admit that the old days were by far better. I do not say all that with any special motive. I hold that so far as social laws are concerned Mysore is ahead of all other parts of India. And if I am not wrong—Mysore friends would excuse me— Sir Sayaji Rao Gaikwad was the first to introduce Educational and Health reforms long before Mysore and other stepped in.

Dr. Ambedkar : He did a blunder :

Shri Bhatt: You want to take us, the people of Rajasthan, on to progress. We find that we are a tardy people and go slow. Our speed is that of a camel which cannot go along with the speed of your aeroplane. So it is good to slow down the speed of your aeroplane. The Baroda Hindu Code also lays down :

> "This Act shall apply to all persons domiciled in the Baroda State.
>
> (a) who are Hindus by birth or by conversion to Hinduism or to whom any part of this Act is made applicable by this Act, to the extent to which it is so applicable.
>
> *Explanation 1.* The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus....."

Shri Syamnandan Sahaya : Which Code is this ?

Shri Bhatt : The Baroda Hindu Code.

Shri Syamnandan Sahaya : Monogamy Act.

Shri Bhatt : Yes. It lays down :

> "The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus for the purposes of this Act in so far as the matters in respect of which the Hindu law or any part thereof is so applicable or concerned".

You have been saying that whomsoever would it apply to would be considered a Hindu whether he professes the Hindu religion or not. But I say all the people who live in India are Hindus. I do not say so from the cultural point of view alone. I am saying it from the English point of view as well. After all why are we called Indians or *Hindustanis* ? As a matter of fact the word 'Hindu' refers to the man who is born in a particular territory and certainly not to his religion. And because it refers to the man born in a particular area rather than to the Hindu faith, it means that it covers all the people who inhabit that land. See the following:

> "(b) who have not renounced following the Hindu Law shall, be deemed to be Hindus".

This is the thing and so I request the Hon. Minister to accept my amendment. Now I come to the portion which is not still covered.

Shri J. R. Kapoor: Which of the amendments do you support specially ?

Shri Bhatt: I support my amendment *i.e.* "Those who want to be governed". This covers everything that I want.

I would like to draw your attention to one thing more. Our Hon. Shri Gadgil and Pandit Kunzru too have dwelt upon this point. When Sarda Act, *i.e.* the Child Marriage Restraint Act was introduced in 1928, originally its title was the 'Hindu Child Marriage' Bill. But in 1929 when the report of the Committee was received, some alterations were made in it and its name was changed to "Child Marriage Restraint Bill". You know there were some Muslim members as well on that Committee. They opposed it. When it was discussed in the House in the year 1929 they again opposed it, but in spite of their opposition it was thought desirable to enforce it throughout the country as it was a good legislative measure. With the exception of Mr. Jinnah all the Muslim Members opposed its application to Muslims and said that their divines were opposed to it and as such it should not be applied to them.

If I remember well there was a Christian member, Mr. Chatterji, of the House in those days. He too pointed out that it went against their religion and as such it should not be applied to them. There were speeches of this nature. But in spite of all that opposition the Government applied it to all sections of the population because it was, in fact, good measure. My submission is that if monogamy is really a good thing why don't you impose this restraint on all sections of the population and why do you leave out some people from its purview. May be some Muslim friends are having two wives—there are very few such cases in Hindu society. Generally it has been seen that people from lower classes alone keep two wives but they keep them only to help them in their occupations. Broadly speaking, the majority of Hindus are monogamous either by nature or by circumstances. It is difficult to get even one wife, wherefrom can one get two ? At that time it was stated in the Select Committee Report that :

> "The object of the Bill, as introduced in the Legislature, was to impose restraint upon the solemnisation of child marriages and the method adopted was, broadly speaking, that of declaring all marriges of boys and girls below a certain age to be invalid."

I would like to draw your attention to the fact that the aim and object of the Sarda Act was 'to declare the marriage to be invalid'. But afterwards it was altered. And why was it altered ? It was done because it would have been very strict. You have to keep this thing in view. I would speak about monogamy when I would come to it. After making alterations it was laid down :

> "The Bill has been circulated under the orders of the Government and has elicited a strong expression of feeling that it is objectionable both on religious and on legal grounds of interfere with the validity of a marriage which has been performed.
>
> In our opinion, these objections are at present insuperable and we have accordingly acted upon a suggestion which has been widely made that the Bill should effect its purpose of restraining child marriages not by declaring such marriages to be invalid but by imposing punishments upon those who participate in them."

You would see what a difference it has made. The things that were formerly contemplated to be rejected, were not rejected. Those marriages were not made invalid. But some punishments were imposed on them. Further it was laid down that :

> "The Bill, as introduced applied to Hindus, Jains, Sikhs, Brahmos, Arya Samajists and Buddhists and was a measure relating

to the validity of marriage. As we propose to amend the Bill by making it a measure imposing criminal penalties on participants in a child marriage, it seems invidious that it should be restricted to those particular communities, since child marriages do occur, though not so frequently, in other communities. We propose, therefore, that the amended Bill should be general in its scope and apply to all classes and communities in British India."

This was a marked departure. They did it after fully appreciating the trend of the public mind and so the Hon. Minister of Law should also go ahead after taking into view the trend of the society. This is my only request.

See what is laid down about the Indian Christians in the Christian Marriage Act. See what is laid down in the Parsi Act regarding the *bona fides* of the Parsees. This is a very limited definition. A Parsi is he who professes Zoroastrianism. There are several cults here in this country and people follow someone or the other. That is why I submit that all the people should be considered as 'Hindus'.

The Sarda Act has not been applied to Part B States so far. According to the amendment of 1950, the subject is in the Concurrent List and can be applied to any State. You can apply anything you like to those States as well. But in spite of that provision being there this Act has not been enforced in Part B States so far.

Shri B. Das : I hope Dr. Ambedkar takes note of this.

Dr. Ambedkar : All that would be cancelled.

Shri Bhatt: So I was speaking to the Hon. Minister of Law about divorce. I respectfully want to submit that he should allow a law to continue so long as it does not go against the social customs. And for those persons who favour these reforms, provision for Civil Marriage is already there.

Dr. Ambedkar : For them too the door should be closed.

Shri Bhatt: Do not close the door for those for whom it is open, notwithstanding whether they come from the door or from the window. But allow the various customs to prevail in the various sections of the population, at least in those sections of the Hindu population who are backward in education and in other respects. Our Hon. Minister of Law has not made a tour to peep into the actual working of the Hindu society. Please have such a tour and contact the people, show them your books and convince them about what you have brought for them. A real thing

can never lose its reality, just as gold can never turn into a stone ; it can only become refined gold. So please allow gold to become more refined and let them have time to understand what divorce actually means. Do not give rise to a dispute here. Those who favour such reforms are at liberty to make use of the Civil Marriage Act, and have the facility of divorce under that Act. You ask how those people, who are not married under the Civil Marriage Act, can have the benefit of divorce. I give you a suggestion in order to find out a way for them. Allow them to get their marriages registered under the Civil Marriages Act so that they may also have the benefit of having divorce, if they so desire. In this way they can have a wider door open for the fulfilment of their wishes.

Shri R. C. Upadhyaya : What do you suggest if the husband favours it and the wife does not ?

Shri Bhatt: The wife listens to the words of her husband. She still considers her husband "God' at home, notwithstanding the fact that she may be an educated one. But that does not mean that Hindus consider their wives as their serfs. She is the mistress of the house and a *Devi*. These are the words which are used for her. I do not believe that Hindu society is so degenerated as to consider its womenfolk as serfs. If anybody has any such impression, he should wash it off. I say even in those sects which are called backward, women are mistresses of their homes and their men do only what they direct them to do. In Rajasthan and other places there are several social customs which are included in the *Shastra* and that *Shastra* is known as the *Doshi Shastra*. People do every thing in the manner in which the old ladies advise them to do. If a *pandit* makes a mistake while performing a sacramental marriage ceremony, it is at once pointed out with the help of songs as to where he has committed mistake. If there would be any mistake in the *Saptpadi* etc. we at once come to know with the help of the songs as to where the mistake has actually occurred. In this way, all those customs go on with the help of the songs not be presumed that women are not honoured in Hindu society.

A drunkard might be a good man, a great man or an educated man but in spite of all that he is a drunkard. It only intoxicates a man, what else can be the effect of the drink. Whether a drunkard is from a backward class or from a higher class he or she is nothing more than a silly person.

Shri R. C. Upadhyaya : What should be done for them ?

Shri Bhatt: Only the next day that intoxication would go by itself and everything would be all right. You do not know that that becomes their habit. All of us have a number of habits good and bad, and so far as in toxication is concerned I have come across a number of people who take two or three bottles of whisky at a time and still do not subject themselves to intoxication. The Hon. Doctor might be remembering that there used to be a number of persons in the Bombay Bar Council who could not argue their case in the courts unless they had taken one or two pegs.

Mr. Chairman : May I know on which provision of clause 2 the hon. Member is speaking ?

Dr. Ambedkar : We are discussing Evacuee Property Bill.

Shri Bhatt: Sir, I should be excused, there has been a little digression. But I would like to remind you that some of my friends talked about it. What I was submitting was that nobody stated that you were only bringing any deterioration or improvement in the Bill by keeping or not keeping any provision of monogamy in it. What is the necessity of imposing legal restraints on it ? If you are bent upon imposing them we would have no objection, but then please impose it on all sections of the population of the country, because the Muslims too then would not feel about it. They too would agree that it is a good thing and that as such it should be applied to them as well. As Sarda Act has been applied to one and all, similarly its application too should be extended to all sections of the population. So far as divorce is concerned it is already prevalent in the Muslim community. Hence my request is that whatever legislation you like to make, it should be applied to one and all. Nobody should be excluded from its application, it should apply to Indians generally.

I admit that you have come up to appreciate us and to accommodate our viewpoint. You have become so much accommodating now that you have realized the position. And now if you do not want to do anything, at least please do one thing. Take out the marriage and divorce clauses from the original Bill, pass them as a separate law and make it applicable to all the Indians. If you would do that everybody would be happy over it, would praise you and would say that you have really done a brave deed. All opposition would go automatically ; it would vanish and people would say that the Government have taken the right step which gives them the maximum satisfaction. Although that would not be complete satisfaction, yet that would be the maximum under the

present circumstances. So please adopt this course after taking into consideration the present day situation. When you would proceed to do it, you would come to know what more should it contain and what more improvements you ought to bring in it. (*Interruption*). Hence I request you to look towards them as well so that you may come to know where exactly the shoe pinches. The wearer knows where the shoe pinches. At that time you would come to know that the opposition is very strong. Several sister would come here, would entreat you and then you would come to know about the real position. Several other people too would come here and you would come to know the extent to which this measure would be opposed. But I say do not mind the opposition from whatever quarter it may come. Wait for sometime and then as the Sarda Act was passed by the Government without caring for any opposition, similarly pass a law which may apply to one and all. There is no question of time in it. Prepare a new draft Bill and when we meet in February next, put it before the House.

Shri Syamnandan Sahaya : It would be the month of *Phagun*. I think that would be the opportune time.

Shri Bhatt: Yes, it would be the month of *Phagun*. But whatever month it may be I most humbly put forth my suggestion. I do not say all this simply by way of a joke. It would certainly benefit the whole of India. Why do you benefit a few selected Hindus only, benefit the whole nation. Send your invitation to all and make this law a perfect one.

With these words, Sir, I request the Hon. Minister to think over my suggestions. Last of all I appeal to you that this is not the opportune time to go ahead with this legislation. Stop there, it would bring no harm to the country, it would only bring cheers to the Government. Sir, I have certainly taken much of your time, but I did not make an effort to prolong my speech in any way. I would request the Hon. Minister who is the representative of the Government here, to consider our humble but plain request so that it might bring glory to our Government.

***Sardar B. S. Man :** Sir, I thank you very much for calling me to explain my position.

I have moved an amendment that the Sikhs be absolved from the operation of this Bill and that the Sikh community be not brought into the (315 PSD) orbit of this Bill. I would have very much liked to have

*P.D., Vol. XV, Part II. 18th September 1951, pp. 2835-40.

moved an amendment not embracing simply our community in terms of Sikhs, or Hindus or Muslims ; but looking at the main clause as it has been framed, I was forced to use this word. I would have very much preferred to have used a territorial term saying that the *Punjabis* be absolved, or certain agricultural classes be absolved. But, since the framers of the Bill themselves have used the word Hindu, Jain, Buddhist and Sikh, I have moved an amendment in these terms. In fact, I have an amendment to clause 1 that the operation of the Bill be not extended to Punjab and P.E.P.S.U. I base my arguments not on narrow communal or religious grounds. I shall come to that later. I do not minimise the fact that this attempt to bring the Sikhs under the domain of Hindu Law will savour of bad political communial taste.

The other day, the learned Doctor cited a case to show that the Sikhs have all along been governed by the Hindu Law. With all apologies to him, I may point out that the law that he has cited was confined to the non-agriculturist properties. The Sikhs mainly comprise agriculturists. In fact the agriculturist Sikhs comprise 95 per cent. of the Sikh community. When you have to discern clearly and generalise in this way as to what law applies to them, you have not got to see that commercial classes of the Sikhs, the *khatri* Sikhs or other Sikhs who are resident in the cities, but you have got to look to the main community, the agriculturist Sikhs and see what their laws is. And I can cite not one, but innurable cases. I can cite case after case to prove that in the Punjab the agricultural Sikh, along with other agricultural classes were all along governed by a secular law—and here incidentally it was an advance far ahead of what is proposed in this Hindu Code. So, I say we are there absolutely governed by a secular law. There we have got a uniform law for the agriculthral population who form the bulk of the population. We should not look at the law governing the microscopic minority of the people. We have to look at the law that prevails among the main bulk of the population, the main bulk which in this case forms about 95 per cent. of the population there. There, as I have said, we have an advanced law, that whether he be a Muslim or a Hindu or a Sikh, we are governed so far as succession to property is concerned, by one common law, and that is the customary law. But here you are bringing forward this Hindu Code and so I confront you with the statement that we have got one common, uniform law which cuts across all communities and all narrow communalism in the Punjab. But by this measure you are trying to introduce for the first time communalism in the Punjab. (*Interruption*). Yes. The customs are

1 P.M.

there and they are due to the long usages which have been recognised. Various attempts have been made to over-ride customs ; but all this is is bad and it wiill be a bad policy and quite definitely an ill-advised policy, to promulgate laws from the top and then within these fifteen days change the entire structure of society there which has come through for a very long time and which has imbibed in itself the wisdom of the ages and the spirit of the time. I am mot saying that because a particular law has been laid down by a particular old *Brahmin* and so it cannot be touched or changed. I am not basing my argument upon that sort of sanctity. I only say that the custom has come down to us and it has developed, due to the lack of rigidity it has imbibed into itself certain practical usages, usages very useful to the genius of the people there. I will come to this part later on. Here I only refer to it to say that custom over-rides the written text. The custom in the Punjab has been there and is still the law there.

Apart from that, I shall prove also that my customs are far more advanced than this retrograde step that is now being proposed. They are much more advanced in many respects.

I ask that the Sikhs be absolved from this Bill, for this reason also. It will surprise hon. Members, as it has surprised me, that all along, since the introduction of the Hindu Code Bill in this House by Mr. Mandal—in fact though Dr. Ambedkar is trying to improve upon that Bill, nevertheless he is carrying Mandal's baby—since the introduction of the Bill up to now, there has not been a single Sikh Member on the Select Committee.

Dr. Ambedkar : Giani Gurmukh Singh ?

Sardar B. S. Man : No. No Sikh opinion has ever been consulted on this vital question. Nor has there been appreciable agitation among the Sikhs because we were told that the agricultural property will be an exception under this Hindu Code Bill and this led to a sort of indifference among the Sikh community towards this Bill, 95 per cent. of the population thought that this Hindu Code Bill was not going to touch them in a vital way.

Shri A. C. Shukla : Have the Sikhs passed any resolution against the Code in any of their conferences ?

Sardar B. S. Man : I can speak for the Sikhs much better than the hon. Member. There are a few ladies here and on such a vital matter as this they are consulted and listened to and their advice is accepted. But in this House we are seven Members of the Sikh community and

I challenge the hon. Member to produce a single Member of the Sikh community who is in favour of this Bill completely and totally ?

Shri A. C. Shukla : What about those outside the House ?

Sardar B. S. Man : Again and again on the floor of this House, speaker after speaker has pleaded, let us not proceed with the majority of the Members here. Let us conduct a referendum of the people outside. If that is what you want, let it be referred to a referendum of the Sikh community. Till then it should not be passed with the majority of the Hindu Mebers here. I am not a Hindu. I have never followed the Hindu Law. I am constrained to say that this law is a conversion law for the Sikhs. You are bringing in totally obnoxious principles, certain novel innovations which have never been followed and which in the villages have never been heard of and you are forcing down our throats something alien to us. Even the ladies here, though few, are consulted and listened to and we the seven Members are unanimous about Sikh opinion that certain provisions which are retrograde and obnoxious should not be forced on us. My friend asks whether they have passed any resolution to that effect. My grievance is that Sikh opinion has not been consulted. The very fact that Dr. Ambedkar has not received the memoranda of the Sikh societies and S.G.P.C, which is an authentic body to speak on behalf of the Sikh community so far as their personal law is concerned as also their religious precepts shows that the Sikh community has not been consulted.....

Sardar Hukam Singh (Punjab)**:** Resolutions have also been passed in certain Sikh conferences against this Code.

Sardar B. S. Man : My hon. friend Sardar Hukam Singh enlightens me that there have been resolutions. At the time of the original introduction of the Bill or at the time of the formation of the Select Committee no Sikh Member was either consulted or represented on the Committee. Dr. Ambedkar says that Gyani Gurmukh Singh Musafir was there. Would be then listen to his advice, if he was there ? If there had been a single Member of the Sikh community would he give due weight to his opinion ? He was not a member of the Select Committee then but when the House adjourned and later when Dr. Ambedkar agreed to consult more *pandits* and he had a sort of informal conference, incidentally then Sardar Gurmukh Singh Musafir was asked to give his opinion. If as he says that he consulted Sikh opinion in the person of Sardar Gurmukh Singh Musafir then please listen to his advice so far as the Sikh community is concerned. But the Government did not think

it proper to include Sikh Members in the Select Committee and we of the Sikh community were never really agitated because till this day we were led to believe that agricultural property would not be touched and will be made an exception. Suddenly when this Bill is introduced we find that in his wisdom he has brought even agricultural property within the purview of this Bill. We were indifferent in the original instance because of the exemption of agricultural property and we never really applied ourselves to the provisions of the Bill. Now this Bill has suddenly emerged : it is a hotchpotch, it is retrograde in many respects and an advance in some other respects, it is a heterogenous combination and it is thrown at our face asking us to accept it. I frankly admit that I for one fail to comprehend its provisions and much less will the illiterate person or peasant in the villages. Much less so an illiterate person, a peasant in the field, because the peasant was told. "do not be worried because it is not going to touch you". My grievance is that Sikh opinion was not consulted to any apreciable degree. And now when you pass this Bill with the help of the Hindu majority here, it will leave a very bad taste and memory in the minds of the Sikhs that in spite of their unanimous opposition to the Bill, in spite of the fact that they were led to believe that most of the provisions of the Bill will not apply to them suddenly, at the fag end of the session it was passed much against the will of the community.

An Hon. Member : Then let your Members show the opposition.

Sardar B. S. Man : Yes. My esteemed friend, Sardar Hukam singh who can speak on behalf of the Sikhs in a much better capacity than myself has shown his opposition. After all, it is not a political matter that you may not accept his advice. It is not such a matter in which because he sits in opposition his opinion may be declined. On matters of personal law, on matters of religious precepts, on matters of adoption of Hindu communal law, you must accept the opinion of the representatives here ; and we are unanimously opposed to it. And if in spite of our opposition you proceed and make the provisions applicable, then it will be a strange thing—it will go down as something autocratic, something savouring of the communal. It so happens that we are only seven Sikh Members here. But we want that so far as religious matters are concered, so far as personal law is concerned, due weight should be given irrespective of the fact that a section may be numerically very much weaker. You have already made exceptions. I am not arguing on these lines because you have made exceptions. Because a Muslim is

allowed to marry four wives, I do not say that I should be allowed to marry four times. The fact is that you have made exceptions. Why ? Because you found that the law of the Muslims, the law of the Christains, so far as their personal law was concerned, was absolutely different. And since it was completely different and in many respects diametrically opposed to the Hindu Code, therefore you made an exception so that it may not be forced down their throat. That way you gave a latitude and thus you accepted the principle that irrespective of the fact that the Hindus may be in majority here they will not force a law of theirs, so far as their personal usage, religious precepts, etc. are concerned, down the throat of any minority. If you have accepted this because the Muslim Law and the Christain Law and even the Parsi Law is fundamentally different, then I may be permitted to prove on the floor of this House—on any given subject that you are trying to legislate, for example, marriage succession or divorce—that the Sikh Law is entirely different. Then I claim the exception which you have extended to the Muslims. Because the Muslims proved that they were governed by an entirely different set of laws they were given an exception. And if I prove here that I am also governed, in every single item which you are trying to legislate here, by a different law, and that my law is fundamentally different from yours, then I claim the same concession which has been extended to Parsis, Muslims and Charistains should be extended to me also.

Mr. Chairman : The Hon. Member may continue tomorrow.

The House then adjourned till Half Past Eight of the Clock on Wednesday, the 19th September, 1951.

*HINDU CODE—*contd.*

[9-30 A.M.]

Clause 2.—*(Application of Code)—contd.*

Mr. Deputy Speaker : Before the discussion starts I might inform the House that this is the sixth day of the debate on clause 2. Practically all shades of opinion have been covered. (*Interruption*). It is not as if every hon. Member should be allowed to speak. The matter has been sufficiently placed before the House both for and against the Bill as a whole and also particular clauses. We must be able to see the end of the discussion so far as clause 2 is concerned. I would request hon. Members not to occupy the whole time but give opportunities to other hon. Members so that we might close the debate on the clause today. hon. Members will try to be brief and short, as all the points have been elaborately discussed already.

† **Sardar B. S. Man** (Punjab)**:** When the House adjourned yesterday I was advocating that the Sikhs be absolved from the operation of the Bill and I was basing my arguments on two counts. One was that we in the Punjab are predominantly agriculturists, who form 95 per cent. of the population and the Sikh community forms a predominent part among the agriculturists. We in company with other fellow agriculturists, both Hindus and Muslims, are governed not by a Brahmanical rule of law, but by an entirely secular set of laws. We are governed by customs, secular customs and they are different fundamentally from the proposed provisions of the Bill. Secondly, I said that Sikh opinion on this vital matter has not been consulted. I was dealing with the second point.

I have now looked into the matter and gone into the entire body of opinion circulated to us in the report of the Hindu Law Committee and I find to my dismay that not one authentic opinion on behalf of the Sikh community has agreed to this Bill. (*An hon. Member*. How authentic ?) There is an interruption asking how it is authentic. Perhaps many hon. Members in this House may not be aware that we have a statutory body for the Sikhs set up by law which votes according to the law made by the Government of India. There are 151 members who represent the entire community for the management of the *gurdwaras* and the administration of their religious laws. This body is known as the Shiromani Gurdwara Prabandhak Committee. Incidentally it may be taken in this House that this body is dominated by certain very very

* P.D., Vol. XV, Part II, 19th September 1951, pp. 2841-98.

†*Ibid.,* 19th September 1951, pp. 2841-48.

aggressive or communal Sikhs but it will be a surprise to the House to know that at present its president is no less than Sardar Nagoke, a staunch Congressman. The body is entirely dominated by Congressites. This body which is not aggressively communal and which has been set up by statutory law has expressed its emphatic opinion against the Bill. Nothing can be more representative than the opinion of the S.G.P.C., let alone the numerous conferences and gatherings of Sikhs which have expressed their opinion against it.

The Minister of Law (Dr. Ambedkar): Where ?

Sardar B. S. Man: Outside the House, I ask the Government to take one position. Either pass this Bill because you are sure that the majority of the Members here, who are representatives of their communities, want it or you think that the representatives of a particular community are so outmoded that they do not represent the real opinion outside the House, which wants the Bill. Stand on any of these two positions either inside or outside the House. We are six members here representing the Sikh community. (*An hon. Member*: You said seven yesterday.) The senvth is from U.P. Even if you are prepared to base your position upon his opinion I am prepared to risk it, though I have not consulted him because I know very well the opinion of the agriculturists and he is one of them. We six Members here represent P.E.P.S.U. and the Punjab. You cannot say that we all belong to the same party. Here are Ministerialists, there is an independent like Sardar Sochet Singh, people who are diametrically opposed to Congress party like Sardar Hukam Singh, who is an Akali leader and there is the Congressman Sardar Gurmukh Singh Musafir. I ask the Government on whose opinion you have derived the impression that the Sikhs want the Bill. I challenge that we are unanimously opposed to it. Do not force it on us just as you have not forced it down the throats of Christains. The Christians numerically are almost the same number as we in the Punjab. You have made an exception of the Christains but you are not prepared to make an exception of the Sikhs, As representatives in this House we do not want it. If you say that people outside want it, I ask the Law Minister and the Minister of State Mr. Tyagi, who is now a Government supporter, to produce a single opinion to show that we want it. (*Interruptions*)

The Minister of State for Finance (Shri Tyagi): *Indicated dissent.*

Sardar B. S. Man : I am sorry I reffered to Mr. Tyagi, as I thought that the interruption came from him, since I was opposing the Government and he was supporting it now.

Shri Tyagi: I am a widower and I have no interest either in marriage or divorce.

The Minister of States, Transport and Railways (Shri Gopalaswami) : Who knows ? You may yet improve !

Sardar B. S. Man : Many who are widowers here want the divorce system to be there because they hope to find their deliverance through it. However, Mr. Tyagi is an exception. In spite of the fact that he is a widower he is against divorce, rather an unusual phenomenon.

Sardar Sochet Singh (P.E.P.S.U.)**:** He may be interested in divorce in his neighbour's house.

Sardar B. S. Man : So, as I said, we were not consulted. Although, political opinions are very divergent on the Sikh community, the present Government is not listening either to the Congress Sikh, the Akali Sikh or the independent Sikh, nor even the Ministerialist Sikh. It is surprising how the Government has come to the wonderful conclusion that the Sikh opinion has been sufficiently agitated and consulted. After my speech yesterday, certain friends came to me and told me "Mr. Man, it is all right. We admit that your customs are different and that you were not consulted sufficiently. But why can we not legislate for you ? Because all along you have been a Hindu and you were governed by Hindu law," I shall come to that point of whether we have ever been governed by Hindu law, but as to the point whether we are Hindus, I should not like to repeat the argument here but I would like to mention something in that connection. I came across a pamphlet yesterday wherein it is said that if you go to a village and tell a Sikh, "You are a Hindu", the answer will be not in words but a slap on your face. I will not—I dare not— use that argument here.

Pandit Thakur Das Bhargava (Punjab)**:** How are the Sikh agriculturists differently placed from the Hindu agriculturists of Punjab ?

Sardar B. S. Man : I would have much liked to argue, and in fact I am actually basing all my arguments on that fact, that as an agriculturist I am in the company of Hindu agriculturists and the Musalman agriculturists. And my lawyer friend knows perfectly well that the Sikh agriculturist, along with the Hindu agriculturist and the Muslim agriculturist, is governed by a customary set of laws applicable uniformly to all. If I am using the word Sikh, it is due to the bane of this Bill. I would have liked to argue that the agriculturists of the Punjab

be absolved, but what shall I do when the Bill—in that respect a backward Bill, a communal Bill—legislates for Hindus, Sikhs, Jains etc. and talks in terms of communal groups and not in terms of secular groups ?

Pandit Thakur Das Bhargava : Is it not a fact that the Hindu non-agriculturists living in the villages follow the same customs as the Hindu agriculturists ?

Sardar B. S. Man : Yes. That is the beauty of our entire law in the Punjab. It is an advancement on other parts that we in the Punjab are governed by village communities and not by religious law. We are governed by land and we revolve round land laws, secular laws. Let me give a quotation to meet this interruption. I will quote from *Rattigan's Digest*. My whole point is that, so far as this law is concerned in its application to Punjab, it is not reformative : it is not progressive because it is too conservative, because it is too orthodox ; it is retrograde because it is communal—our law in the Punjab has gone much farther at least so far as secularism is concerned. In our village communities we have been governed by the same set and same pattern of laws ; Hindus, Muslims and Sikhs, agriculturists and non-agriculturists, were attached to the land all these ages ; they imbibed the wisdom of the ages and the spirit of the times and throughout they were governed by one set of laws. But Dr. Ambedkar comes out one fine morning with this Hindu Code Bill—perhaps he is jealous of us—and says, "I am going to cut across you and split you into two communal groups". Either you be a Hindu or you be a Mussalman ! That is the effect of it.

Shri Naziruddin Ahmad (West Bengal)**:** Rather, "give up all religions"!

Sardar B. S. Man : Now what does *Rattigan's Digest* say in this matter ? It says :

> "It had long been felt by those best acquired with the habits and customs of the rural population that neither the *Shara* nor the *Shastras* really exercised any direct influence among them."

Then:

> "The Hindu law extravagantly exalts the Brahman; it gives sacerdotal reasons for secular rules. In the Punjab, Hindus and Mussalmans converted from Hinduism may fear or feed the Brahman; but in civil affairs Punjab Customary Law ranks him with other men. It is essentially unsacerdotal, unsacramental, secular."

Mr. Deputy Speaker : Is not the *Shariat* now applicable to the Punjab ?

Sardar B. S. Man : I am splitting up the Punjab population into two distinct groups : one group comprises 95 per cent. of the population and the other remaining five per cent. The 95 per cent., and in fact even more, live in the villages and is attached to the land.....

Mr. Deputy Speaker : Was not *Shariat* passed in undivided India ?

Sardar B. S. Man : I shall come to the Punjab laws. There the custom is the primary rule of decision to the exclusion of *Shariat* as well as the Hindu Law,

Dr. Ambedkar : That has been overruled by the *Shariat* law.

Sardar B. S. Man : *Shariat* will fill in the gap when there is no customary law prevalent. It is quite distinct. I must refer to that later since I do not want my argument interrupted now. We have legislation—the Punjab Laws Act of 1872, clause 5—where it is distinctly laid down that in Punjab the first rule of decision will be the customary law and where there is no custom and a gap arises only then the Hindu law or the *Shariat* law will come in.

Shri R. C. Upadhyaya (Rajasthan) **:** Are the customs reduced to writing ?

Sardar B. S. Man : Not only, reduced to writing but compiled, listened to and decided—not for ten or fifteen years but for ages.

An Hon. Member : Is not your custom the same as Hindu custom ?

Sardar B. S. Man : What innocence ! If I were to prove to my friend here that my custom is entirely and fundamentally different from Hindu law, will he be prepared to make an exception ?

Pandit Thakur Das Bhargava : If a custom is reasonable. Dr. Ambedkar is bound to accept it (*Interruption*).

Sardar B. S. Man : The interruptions are many. Interruptor says that if I convince him he is bound to accept it. I do not know whether I can convince a person who is not willing to be convinced : Dr. Ambedkar says, even if he is convinced he will not accept it.

Now, let me give a quotation from *Mayne's Hindu Law* ; it has held the field for a fairly long time and is a fairly authoritative commentary. It says:

> "As regards the Village Communities, the Punjab and the adjoining districts are the region in which alone they flourish in their primitive rigour. This is the tract which the Aryans must have

first traversed on entering India. Yet it seems to have been there that Brahmanism most completely failed to take root ..... and the religious element has never entered into their secular law:"

If I have enjoyed emancipation from Manu for so long a time, will it not be a tyranny of the times if I have to submit now to a modern Manu ? If I have not been governed by Brahmanical rule and I have had secular law for a long time in Punjab, if I have not accepted Manu's religion, then let me assure the House that Punjab is not going to accept Ambedkarian religion henceforward, (*interruption*). Let me give credit to Manu that at least he was original in many respects, but my modern Manu—oh, what a fall has he had ! He is neither original nor progressive. (*Interruption*). You ask who is the modern Manu ? Well, I need not say.

Dr. Ambedkar : I am not a modern Manu.

Sardar B. S. Man : In Punjab we do not recognise communal groupst and the application of this law will, for the first time introduce the communal element there. I shall read to you from *Mayne's Hindu Law,* 9th Edition, Page 48, where it is said:

"The special interest of Punjab Customs arises from the fact that Brahmanism seems never to have succeeded in the Punjab. Accordingly, when we find a particular usage common to the Punjab and to Sanskrit law, we may infer that there is nothing necessarily Brahmanical in its origin. The Brahmans are not, in the Punjab, the depositaries of Customary law. To ascertain it, we must go to the Jirga, or Tribal Council, if there be one, or to the elders of the tribe.

Shri R. K. Chaudhari (Assam)**:** I am sorry to interrupt, but let us come straight to the point. Does the Hon. Member want monogamy or not ? That is the question.

Shri Tyagi: Why beat about the bush ?

Sardar B. S. Man : A false sense of security is being created in the House through the Press that Government want to proceed with only marriage and divorce. Has Dr. Ambedkar declared here difinitely that he is leaving out the other portions and he is only concerned with marriage and divorce ? I am discussing the applicability of this Code in its entirety. I proceed on the assumption that the other portions are not going to be dropped. I caution my friends. Once Government lull you into a sense of indifference and false feeling of security, they will proceed with the other portions.

Shri R. K. Chaudhari: Please answer my question. According to the customary law monogamy is allowed in Punjab. Are you in favour of continuing the monogamy law ?

Sardar B. S. Man : I shall discuss that threadbare, law by law.

Mr. Deputy Speaker : We are not going to take up other matters. I think, it was made suficiently clear by the Hon. the Prime Minister who stated that they would proceed only with marriage and divorce. If this is accepted, I hope the hon. Member will resume his seat.

Sardar Hukam Singh (Punjab)**:** If this clause is accepted at this stage, would it be again taken into consideration when the other Chapters come up ? Once it is made applicable, certainly the whole thing has to be thrashed out at this stage.

Mr. Deputy Speaker: If the Bill is confined to marriage and divorce and the other parts are brought in by a separate Bill, does the Hon. Member think that this clause will apply to everyone ?

Shrimati Durgabai (Madras)**:** What is the basis for the Hon. Member's statement that the most important Chapters relating to inheritance will be dropped ? What is the source of his information ?

Sardar B. S. Man : The hon. lady Member comes to my rescue for the first time. It is exactly because the other portions have not been dropped, I say that I am perfectly entitled to discuss the whole body of it.

Shri Bharati (Madras)**:** The Prime Minister and the Law Minister have already stated that due to factors of time etc. it is more than unlikely that the other Chapters would be taken up. Although it may not be a categorical assurance, for all practical purposes we may take it as the official decision. If we take the practical aspects of the matter, in all probability, I may even say 99 per cent. the other Chapters would not be taken up during the current session. It is just possible that we may take them up during February or March next, but during the current session it is absolutely impossible to take up other Chapters. It will be great fortune if we finish Chapter II. Therefore, I would request other members to co-operate. At least, let us pass this portion. I think it will be in the interests of the discussion if Dr. Ambedkar makes some kind of statement and gives, if not a categorical assurance at least some indication, that only the provisions relating to marriage and divorce would be passed during the current session.

Pandit M. B. Bhargava (Ajmer)**:** Has the hon. Member been briefed by the Government of India to take up this position ?

Mr. Deputy Speaker : Hon. Members are entitled to speak on both sides.

Dr. Deshmukh (Madhya Pradesh)**:** After all, clause 2 does not make any distinction between different portions of the Code as it has been placed before us. If my hon. friend does not say at the present stage all that he wants to say with respect to the other Chapters, he will be precluded from saying them later, because clause 2 is of general application to the whole Code and does not refer merely to marriage and divorce. Once clause 2 is accepted, it will apply to the whole Code and unless we have an amendment saying that it applies to marriage and divorce only—and no such amendment is before us from Government—I think the hon. Member cannot be stopped from bringing in other Chapters.

Shri J. R. Kapoor (Uttar Pradesh)**:** Even if clause 2 is passed in this form or an amended from, it will not preclude any one from saying at any subsequent stage that any particular portion or Chapter shall not be applicable to this section of the community or that. Take for instance the question of succession and inheritance. When that Chapter is taken up, it will certainly be open to us to add a clause to the effect that this part of the Code shall not be applicable to Sikhs or this or that community. The passing of clause 2 would leave the door open to discuss the matter later on and it may be advisable for all of us, if we are agreed on the marriage and divorce laws subject to such amendments as may be acceptable, to proceed with the Bill.

Mr. Deputy Speaker : I am in a fix. I thought I would be able to ask hon. Members to conclude the debate on this matter having regard to the statement by the Hon. the Prime Minister that the Chapter on marriage and divorce only will be taken up. He said so particularly. Now, if clause 2 is to apply to all the other Chapters I do not know how I can ask the hon. Members not to refer to them. That is my fear. I would like elucidation from the Hon. the Law Minister. Otherwise the scope will become wider and it would not be reasonable for me to say that the debate shall be concluded so early.

Dr. Ambedkar : The Hon. the Prime Minister stated the other day that the House will rise on the 6th.

Shri Naziruddin Ahmad : That is only provisional.

Dr. Ambedkar : Whatever it may be, it is there. I think I can say without giving away the position of the Government that it is quite clear that it would not be possible to proceed in this session beyond the

Chapter dealing with marriage and divorce. When we reach the end of that Chapter. I propose to move certain amendments to these two parts in order to make them self-contained and to attach to them certain Schedules which go with marriage and divorce. I think the House may well take it that that is the intention of Government so far as the present session is concerned. When, for instance, the other parts are taken up, no doubt any Law Minister who would be then piloting the Bill and the Draftsmen would see to it that those parts were also self contained and the same definition and rules as regards applicability will have to be repeated in the other parts when those parts are placed before the House. Obviously, the clauses dealing with applicability when they will be confined to this part would by no stretch of imagination be extended to the other parts unless they are repeated there. I think that any lawyer Member of this House should be able to understand that that would be the position, so that when the other parts come to be discussed it would be open to the House to see whether the same definition which is given now as to the territorial applicability of this part or the social applicability of this part should be the same as will be enacted so far as this part is concerned. It will be open to the House and also for the Government to see to it whether those parts should be made applicable universally in all parts of India, or whether they should be applicable to all communities, or whether any exception might be made. That is a matter which I think should be left to the future Government, the future Law Minister and the future Parliament.

10 A M

Shrimati Renuka Ray (West Bengal)**:** On a point of order, Sir, Clause 2 has been under discussion for three days in the previous session and three days now six days in all. Almost all the speeches on clause 2 have gone into the merits of the provisions of the whole Bill. I want to ask whether once the consideration stage is over, is it open on a discussion of a clause, to go into every detail of the Bill as it has been done during the debate on clause 2 ?

Shrimati Durgabai: May I seek a clarification. In the light of what the hon. the Law Minister has stated and also in the light of the fact that this House attaches considerable importance—the greatest importance—to the clauses relating to inheritence, because they are based on the principle of equality, is it the intention of Government to bring a separate Bill relating to those clauses in the next session of Parliament, if not during this session of Parliament ?

Dr. Ambedkar: I am afraid that is entirely outside my jurisdiction. It is a matter which I should leave to the Prime Minister to answer.

Shri Deshbandhu Gupta (Delhi)**:** In view of the statement that has been made by the Hon. the Law Minister, may I know whether it is also the intention of Government to change the title of the Bill, because it is no longer a Code ?

Dr. Ambedkar: When I reach clause 55, I shall move all the necessary amendments to make this an independent Bill and take it out of the Code.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): If I have gathered purport of the hon. Member's question, it was whether other parts of the Bill will be introduced in this session or in a subsequent session. So far as Government are concerned, we have often stated that we stand by the whole Bill. Our difficulty has been the difficulty of time, and we decided to proceed with Part II in this session and to pass it. That did not mean that we were giving up any other part and we would very much like to have the other parts passed too. But practically speaking, there is no chance of our doing that in the present session. Whenever we can avail of an opportunity we should like to take up the other parts.

Mr. Deputy Speaker : The Hon. the Prime Minister was not here when this point was raised. When Sardar Man was on his legs, he was referring to the other parts of the Bill inasmuch as they will be applicable to the Sikhs. At that stage, a point was raised as to whether the Hon. the Prime Minister has not already stated that this measure will now be confined to marriage and divorce and as such discussion should be confined to those two subjects. Having regard to the number of days that have been spent on this clause, I wanted to conclude the discussion on this today. The Hon. the Law Minister then said that it was intended to confine this Bill only to marriage and divorce and suitable amendments would be moved even with respect to the title. In regard to the other parts of the Bill it was said that a fresh Bill would be introduced which would also cover the applicability of this Bill to the territories or communities. A further question was asked as to when that Bill would be introduced, to which the Hon. the Law Minister replied that the Prime Minister alone must answer that question. That is why I was a little doubtful if the Prime Minister has been apprised of the discussion that took place here.

Dr. Ambedkar: I perhaps forgot to say that after clause 55 is reached, I shall not only introduce suitable amendments with the object of making that particular part self-contained, but I shall also move a motion that this Bill, so to say as amended, be passed independently of the other parts.

With regard to the other question, I have looked into the Rules of Procedure. There will be two courses open. One course that will be open to me would be to move that the other clauses be put and negatived, so that Government will be free to bring them together in a separate code or separate part or separate Bill and move them whenever they want. The other course permissible—subject to your ruling—under the Rules of Procedure would be to let those parts stand. I find from the rules that there is nothing to prevent this Parliament from taking out a particular part or a particular portion from a whole Bill that has been before it and to treat it as an independent Bill and pass it. That is a matter which I am prepared to leave to you and to the House. Our present intention is to stop with clause 55 and certain relevant Schedules. I think that makes the position clear.

Shri Jawaharlal Nehru : My hon. colleague has made the position quite clear. I entirely agree with him. We are for the present going to confine ourselves to Part II and complete it as a whole, apart from the rest. Then it depends on various possibilities, as to how best to deal with the rest of the Bill. But this ought to be kept separate.

May I also qualify, or amend, a statement which I made about the length of this session. I said that we would like it to end on the 6th October. As I see the debate proceeding, there is no chance of its ending on the 6th October. So, it will have to go on till we finish important work.

Shri Deshbandhu Gupta : May I seek a clarification ? The Hon. the Law Minister has made it quite clear that this will be a self-contained Bill dealing with monogamy, marriage and divorce. If that is so and the subsequent Bills will also be self-contained Bills, then the question of Hindu Code as such does not arise. Therefore, there will be different Bills and codification will have to follow later on, if necessary. Therefore we are not proceeding with the Bill as it is. We are only proceeding with the different heads of the Bill and at the moment we are only concerned with these three things.

Shri Ramalingam Chettiar (Madras) **:** There are several provinces which have already got laws on monogamy and divorce.

Probably they are better, though the provisions that we are going to agree here is a compromise. We are having this compromise simply because we are going to have a Code. In case the present law is going to be confined to marriage and divorce, why not leave those laws which are passed by the different provinces alone and leave it to the people of those provinces to choose. This is an important issue which you have to consider.

Pandit Malaviya (Uttar Pradesh)**:** May I suggest to the Hon. the Law Minister whether it will not help if he did that at this stage rather than wait till the end ?

Dr. Ambedkar : I do not see any reason for doubting the motives of Government. I have said, and we propose to stand by what we have said.

Pandit Malaviya : I am surprised that he should think that there is any doubt of his motives in what I said. I asked, will it not help if he did it at this stage, because if that is the thing which we are considering, it might become a slightly different situation for some of us.

Dr. Ambedkar : Take it that it will be so.

Pandit Malaviya: When we are in Parliament legislating, it is difficult to take things unless they are done. I simply asked, will it therefore not help if it is done now.

Mr. Deputy Speaker : The Hon. the Law Minister has made the intention of the Government clear. My only difficulty is this—I am not asking him to do it immediately—but when once we pass clause 2 and take up clause 55 I have got a doubt technically as to whether we can modify clause 2 then, at that stage.

Dr. Ambedkar: At the time when you put this clause 2, I want to make a reservation that I reserve to myself the necessary liberty of making certain consequential amendments to clause 2.

Some Hon. Members : No, no. How can it be ?

Dr. Ambedkar: That is perfectly possible.

Pandit Malaviya : That is authoritarian and not parliamentary !

Mr. Deputy Speaker: There is nothing unparliamentary. The Hon. the Law Minister has been extremely reasonable. There is no good losing one's reason or making recriminations. It does not contribute to the coolness of the atmosphere that must prevail here. I understand the Law Minister. He has no mental reservations. He wanted to bring it by way of amendment to clause 55. Then I thought

within myself that at that stage it may be a bit too late. He has suggested an alternative that on clause 2 he will make a reservation to move the necessary consequential amendments. Even there I have a difficulty. I shall no doubt conclude the debate on this clause with that background that this clause, that is clause 2, will apply only to marriage and divorce. But I shall withhold putting it to the House. I shall conclude the entire debate and take it over after the Chapter is concluded. Now, in view of what has been said, hon. Members must be prepared to conclude the debate today.

Sardar B. S. Man : He need not dilate upon the other matters.

Shrimati Durgabai: Now that one hon. Member has stated that certain State Legislatures have passed monogamy Acts, may I point out that only three States—Madras, Bombay and Baroda—have passed such Acts. In view of the fact that there is a lot of confusion being resulted on account of all the State Legislatures not passing the laws and on account of differring High Court judgments, it is highly necessary that there should be a Central law on monogamy and divorce so that it will be applicable to all States whether they wish it or not. Therefore, hon. Members may facilitate the discussion and passing of the Bill upto clause 55.

Mr. Deputy Speaker : Now that the scope of the discussion has been narrowed down let us pass it as expeditiously as possible and avoid, if possible, even sitting during Dusehra.

Shri Jawaharlal Nehru: May I suggest, Sir, that we sit on next Saturday ?

Mr. Deputy Speaker: I was not referring to that.

Shri Jawaharlal Nehru : I know, Sir, I was merely suggesting about next Saturday.

Mr. Deputy Speaker: That can always be done. But let us pass this as early as possible and not sit beyond 6th October, if it is possible to avoid it.

Pandit Malaviya: Even if it is necessary to sit beyond 6th October, I hope we do not sit during Dusehra but sit afterwards.

Mr. Deputy Speaker: That is accepted. We will not sit on any public holiday.

Sardar B. S. Man : Frankly speaking I am not able to understand completely.....

Mr. Deputy Speaker: May I suggest that in discussing clause 2 the relevant merits of all the clauses that follow need not be referred

to. References here and there are enough. I therefore wish to draw the attention of the hon. Member who is on his legs and also other Members that while the applications of those other clauses may be generally indicated here and there, matters as to how they ought to be or ought not to be and how they ought to be modified and so on may all be taken up when we come to the other clauses.

Shri Sarwate (Madhya Bharat)**:** In case we are to postpone the final passing of this clause, would it not be better that all discussion on this clause be withheld to a later stage ?

Mr. Deputy Speaker: We have already spent a sufficient time over this clause, hon. Members may now take it definitely that it is the view of the Government as stated by the Hon. the Law Minister that the effect of this clause will be confined only to marriage and divorce. On that footing it is open to hon. Members to say where it should or should not apply—to Sikhs or Buddhists or Hindus or to certain territories etc. The discussion will be confined to that extent only and not extend to other things.

Pandit Malaviya : May I suggest for the consideration of the Hon. the Law Minister one procedure ? We may finish this discussion on clause 2 today. But after the discussion has taken place, instead of putting it to the House, we may leave it over. There may be no more discussion on it. I am only making a constructive suggestion.

Mr. Deputy Speaker : I have said so already. I will conclude the discussion and call upon the Law Minister at one o'clock.

Shri Syamnandan Sahaya (Bihar)**:** If clause 2 will apply only to marriage and divorce, what will apply to the other clauses ? What about the other clauses of the Code ? What will be the application clause ?

Mr. Deputy Speaker : All the other clauses also will be suitably modified. When they are taken up submissions may be made.

Shri Syamnandan Sahaya : Are there to be two application clauses in the same Bill?

Mr. Deputy Speaker : Hon. Members were either not here or were not hearing properly……

Shri Sarwate : I request one point to be made clear. We have tabled certain amendments. The amendments depend upon the scope of clause 2. So we may be allowed to move those amendments or take up those amendments later on.

Mr. Speaker : All the amendments are being discussed now. I am not going to allow any other amendments. Those amendments together with the clause, including the amendments moved by the Hon. the Law Minister, have been discussed. We have reached a stage. If in pursuance of all the other clauses that are taken up and adopted, we go back to clause 2 and any incidental amendments have to be made to clause 2, the discussion will be confined only to incidental, auxiliary and consequential amendments. Today we may take it that this must be over.

Shri R. K. Chaudhari: I want to have my doubts cleared on this point. I understand that clause 2 will apply only in cases of marriage and divorce. I want to know that when the inheritance chapter comes up will there be a saving clause in that and should it not apply to the rest ? This is not to apply to all but only to those who want to be governed. Will there be such a saving clause in that part ?

Mr. Deputy Speaker : For the time being the Hon Minister and that this Code was confined to marriage and divorce and all the other general clauses also would be suitably changed. As to what will happen when another Law Minister or this Law Minister will introduce at that time, it is a matter of conjecture and it is too early to predict what will happen.

Shri R. K. Chaudhari: How can you allow this clause to be passed ; possibly it will be like the Damocle's sword hanging over us.

Mr, Deputy Speaker : Another clause will be introduced, a similar clause with suitable amendments and then the hon. Member can continue to speak as vigorously if not more vigorously. Let us not spend any more time on this.

Shri J. R. Kapoor : May I therefore, submit that as you are anxious to close the discussion at one o'clock today, the discussion may now start on the amendments rather than on the general aspects ; otherwise, we shall have hardly any time to deal with specific amendments which really matter so far as clause 2 is concerned.

Mr. Deputy Speaker : There will be discussion both on the clause and the specific amendments. I am not going to allow any hon. Member merely because he has tabled an amendment just to go on speaking here.

Shri Bhatt (Bombay)**:** Sir, what has been decided today and what you have conveyed to the House, is that Clause 2 will not be put to

the vote of the House today. I would, therefore, like to know whether any hope is left for us to move our other amendments in view of the stand taken by the Hon. Minister of Law today. Now he wants to enact the Marriage and Divorce Law separately. Will it be in order in this connection to table any amendment, as suggested by me previously, to the effect that the Law should be made applicable to the whole of India and would you permit it to be moved ?

Dr. Ambedkar: You have already tabled an amendment to that effect.

Shri Bhatt: The amendment tabled by me is not on the lines of a similar amendment that was moved in connection with the Sarda Act.

Mr. Deputy Speaker : There is no good asking the Hon. Minister whether he wants it to be applied to every individual in this country and every part of this country. Amendments have already been tabled. Those amendments will be put to the vote of the House and if the vote decides against the Law Minister, he will gladly accept it. Therefore, there is no question of any further amendment regarding territorial restriction or restriction regarding communities. They are all before the House and I am not going to put them to vote today. I will put them later on. It is for the House to accept or reject so far as that matter is concerned.

Pandit Maitra (West Bengal)**:** The Hon. Law Minister says he has not agreed. He says "I will not gladly accept".

Dr. Ambedkar : I said gladly I will not accept.

Shri Radhelal Vyas (Madhya Bharat) **:** On a point of order. May I know, as the debate on clause 2 will conclude today and also the Hon. Law Minister is replying, whether later on any amendment would be allowed to be moved to clause 2 at that stage ?

Mr. Deputy Speaker: Hon. Members are unnecessarily raising points of order. It is not for the hon. Minister to accept or reject an amendment. Consequential amendments, if found in order, will certainly be moved and allowed by the House. Secondly, the discussion on the amendments on clause 2 tabled today will conclude. If any new amendments come in as consequential to the clause that we are now going to pass, they will be placed before the House.

Such consequential amendments to clause 2 will necessarily be made either by the Law Minister or by any hon. Member and then

discussion on the consequential amendments will follow and the original clause with the consequential amendments will all then be put to vote and ultimately accepted or rejected.

Shri Ramlingam Chettiar : I do not know what a consequential amendment is.

Pandit Thakur Das Bhargava : I ask whether it is fair to discuss only divorce and marriage. Is this procedure adopted in any House in the world that we should discuss only divorce and marriage, without knowing the implications and the rights and duties of the husband and wife or how they will succeed each other ? I think this will be extremely disingenuous and the real context of cognate matters will be missed.

Pandit Maitra : Sir, you just now ruled that only consequential amendments will be allowed to be moved but how could you know what is the consequence unless the amendments are put to vote and are either carried or rejected. Then we will be in a position to know what may be the consequential amendments. Therefore, this requires clarification. One cannot move a consequential amendment at a certain stage unless he knows the consequence after the amendments that have been tabled have been rejected or accepted. Unless one knows which particular amendment has been accepted or rejected, the question of a consequential change cannot arise. It is only when one knows the implications of a particular motion or amendment being accepted or rejected that the question of putting any consequential amendment would arise.

Shrimati Renuka Ray : Cannot the discussion, as to what is consequential and what is not, be allowed to be taken up afterwards ? That may take another six days.

Mr. Deputy Speaker: As I stated, subject to what the Hon. Law Minister may say—and I would like to have information—hon Members are anxious to know beforehand, whether any particular communities are going to be excluded and whether any particular territories are to be excluded—whether they have to be applied in part or wholly at one stretch etc. These are the subject matter of various amendments. This will apply not only to marriage and divorce but all the other things also. But there is nothing peculiar in this which cannot be applied as it is into marriage and divorce. As has been suggested by the Hon. Law Minister, he does not pursue the other matters. Only for the words "Hindu Code", he might say that this is an amendment to that extent.....

Dr. Ambedkar: I will say "an Act".

Mr. Deputy Speaker : "The marriage and divorce Act" instead of the word "Code". What I feel that this must be put to the vote of the House. As soon as the Hon. Law Minister finishes his speech, I shall put it straightway to the vote of the House.

Shri Ramalingam Chettiar : *Rose*—

Mr. Deputy Speaker : The hon. Member's issue has already been answered. Any hon. Member, who thinks that there are more progressive laws in the States, can table certain amendments to this clause when we come to the clause by clause stage and thus bring it into line with those State laws. The hon. Member has stated that there are such pieces of legislation in three States and for the sake of uniformity, there must be a central legislation, particularly in view of the fact that this is a Concurrent subject. It is not a difficulty which is insurmountable.

Shri Ramalingam Chettiar: It is insurmountable.

Mr. Deputy Speaker : The Hon. Law Minister does not yield on that point.

Shri Ramalingam Chettiar: I ought to be allowed to move an amendment.

Mr. Deputy Speaker: He has had an opportunity to move it. I am not going to allow any further amendments to be moved. What prevented him from moving this particular amendment before ? When the time comes, let me decide upon this amendment. We will assume that the clauses, inheritance etc. were before the House and we went on from day to day. This House may not wait until he chooses to bring this Bill in line with the State Legislatures. It is an unreasonable demand on the part of the hon. Member. Now so far as clause 2 is concerned this clause will apply to any part. With regard to the other parts, we will confine them only to those parts and not proceed with the other parts. For the purpose of clarification. I will not allow discussion to go on at length and on certain imaginary things which may not be placed before this House. We want to cut short the discussion and the Hon. Minister made that statement and has explained that the consequential amendment will only relate to the nomenclature of this Code. I will put it when we come to clause 55 and even if that is passed in the third reading, we can have it. At one stretch I will allow the discussion and then the Hon. Law Minister

will reply. Then I will put all the amendments to the vote of the House so that there may be no difficulty as to whom it applies or whether they should take any further proceedings etc.

Dr. Ambedkar : I just heard that you would call upon me at one o'clock. But I thought that there is some other business at one o'clock. Perhaps you might give me a minute to start.

Shri R. K. Chaudhari : We must know the consequences of marriage and divorce; that is one thing. Then, Sir, you are willing to allow us discuss, about marriage and divorce and all that without knowing what the effect of the marriage would be, whether the issues of the marriage will get inheritance in this way or that way. That will put at a great disadvantage. I am going to contract a marriage and yet I do not know what the consequences are.....

Shri Syamnandan Sahaya : We are opposed to it.

Shri Deshbandhu Gupta : Are we to take it that the hon. Member is unaware of the consequences of marriage and divorce at this age ?

Shri R. K. Chaudhari : I take exception to this. Sir, I was pointing out.....

Mr. Deputy Speaker : In all serious matters, the hon. Member has got a knack of introducing a good feeling of humour. To that extent he has relieved the tension. The hon. Member knows too well that he is directly responsible for all the acts that he commits whether on account of conjugal felicity or otherwise. Now, Sardar Man.

***Sardar B. S. Man :** You will sympathise with me, Sir, being a junior Member, for this interruption for so long a time.

Mr. Deputy Speaker : The hon. Member may confine himself to the amendment whether this Bill ought to apply or not. He has already said enough.

Sardar B. S. Man : A little allowance due to a junior Member may be allowed to me, Sir. I am exactly in doubt as to what the intention of the Government is. There have been threats of certain reservations, mental reservations regarding moving certain amendments; then there was the explanation by the Prime Minister that they are not proceeding with the Bill except for these two parts because of lack of time. If, incidentally, the House is in a mood to finish it tomorrow, the same position will be there because there will be time to proceed with the

* P.D., Vol. XV, Part II, 19th September 1951, pp. 2861-72.

rest of the Bill. It was a categorical question whether the Government proposed to drop the rest of the Bill, not in this session ; but whether the present Government is dropping the other portions, now or hereafter. These assurances are of little comfort to me that up to the 6th of October this will not be taken, or that it may not be taken in the present session or it may not be taken for lack of time. This sort of argument is no good.

Mr. Deputy Speaker : I may clear the ground. I take the statement of the Hon. Law Minister, the sponsor of the Bill, as the authoritative opinion of the Government. On the footing that they will confine this Bill to marriage and divorce, the hon. Members may go on. That is how I have understood. If there is anything wrong. I may be corrected.

Sardar B. S. Man : I was attaching equal importance to the Prime Minister's statement also. I shall confine myself to my amendment that the Sikhs should be absolved from the operation of this Bill.

The fact is that a certain erroneous impression has gained ground that the Sikhs are firstly, Hindus, and secondly, that they have been governed for a very long time by the Hindu Law. My case is that if I proved that the Sikhs were not Hindus and they were not governed to any appreciable extent by the Hindu Law, then, the Sikhs may be permitted to be out of the orbit of this Bill. In that point, I was interrupted again and again and asked how their law differed from the main body of the law. That was my difficulty. I had to prove that the entire mental structure of a Sikh agriculturist in the Punjab, in company with the Hindus and Muslims, was entirely different and the pattern of the present law is entirely different.

Shri Bharati: So far as marriage is concerned ?

Sardar B. S. Man : Even so far as marriage is concerned. Just wait.

Shri Bharati: That is more important.

Sardar B. S. Man : Let me quote Sir Charles Roe from his *Tribal Laws in the Punjab*. This has been cited with approbation by Sir William Clarke, Chief Justice in 55 *Punjab Record* 1903 Full Bench.

He says :

"The Hindu agriculturist of the Punjab..."

The Hindu agriculturist follows the same law as the Sikh agriculturists.

"...knows nothing of caste except as represented..."

Now, Sir, certain prohibited degrees are being introduced in the marriage laws. I have to point out that my law as regards marriage's

is different and more liberal than the present Hindu Code Bill. In fact, I do not know, after all the present assurances that only 55 clauses will be finished whether it will be a Hindu Code or not, or what Code it will be. You are asking me to speak upon a Bill even whose name I do not know or whose operation I do not know. Anyway, I shall be guessing that it will be a Civil Code or it will be a Marriage Act or some such thing and the word "Hindu" shall drop out. He says :

> "The Hindu agriculturist of the Punjab knows nothing of caste except as represented by his tribe. No doubt, he respects the Brahman and calls him and feeds him on occasions of rejoicing or sorrow, but he would never dream of referring to him or to the Hindu Law for guidance in his daily life. If he has ever heared of the Dharmashastra at all, which is very improbable, he has only done so as a Spanish peasant may have heard of the Bible, he knows nothing whatever of its contents or principles, nor could the Brahman himself enlighten him...The Hindu law cannot be applied to the Hindu tribes, because they have never in fact followed or even heard of it and it is framed for a different state of society."

Mr. Deputy Speaker: Extracts from books should be small ; it ought not to be reading whole books, chapter and verse.

Sardar B. S. Man : The quotation was very long ; I have cut it short.

I have read it only from the beginning and from the end. My difficulty is this. While I am forced to cite the law...

Mr. Deputy Speaker: What is the book ?

Sardar B. S. Man : The book I am quoting from is Rustomji's *Customary law of the Punjab*. This quotation relates to a decided case law in 55 *Punjab Record* 1903 Full Bench.

I have to cite this law because in his previous speech the Hon. Dr. Ambedkar himself quoted a Privy Council decision showing that for a long time Sikhs have been governed by the Hindu Law. I am perfectly entitled today to remove that erroneous impression and show that we are not governed by the Hindu Law. As the position stands today, we are governed by a different set of laws. He relies upon his decisions. I rely upon my decisions. Hence the necessity to take some time of the House. I do realise your anxiety to finish this earlier. But Sir, this is the first time that an amendment has been moved that the Sikhs be absolved from the operation of this Bill and in view of the vital importance of this matter to the Sikh community, I may be permitted to digress a little.

Mr. Deputy Speaker : Now that this Bill is confined to marriage and divorce, the hon. Member may show how far this is retrograde or inconsistent with his law and what is the harm in adopting this.

Sardar B. S. Man : I am quoting exactly those laws which relate to marriage and divorce here. By the present law, certain prohibited degrees are sought to be introduced. I am proving that the prohibited degrees now sought to be introduced have never applied during the history of the Sikhs.

Mr. Deputy Speaker : Cannot that be an exception ? As in the case of customs in the south allowing the marriage of maternal uncle's daughter, which have been validated, any deviation from the generally prohibited degrees will also be put in as an exception.

Sardar B. S. Man: Exactly, Sir, you are coming to my rescue. If the Hon. Law Minister says that so far as marriage customs are concerned, they will respect the customs of the Punjab or the customs of the Sikhs, I will have no quarrel ; I shall sit down.

Shri Bharati: May I draw his attention to part (5) of cause 7 where it is provided, "unless the custom or usage governing each of them permits of a sacramental marriage between the two". Custom is a local thing and that has overriding effect. We have already provided for all that, not only for south India. Where the custom provides for such a thing, it is straightway concerned.

Pandit Thakur Das Bhargava : But what he wants is that all the things incidental to marriage should also be governed by custom. That is what he is pointing out.

Shri Bharati : But he was speaking about prohibitive degrees and I pointed out that the necessary provisions are already there for these exceptions.

Mr. Deputy Speaker: No law says that a sister can marry a brother. There are prohibitive degrees accepted by courts and if there are other cases or other degrees, whether they come under clause 5 or clause 7 or any other clause, suitable amendments can be suggested and the matter discussed.

Sardar B. S. Man : My point is, since exceptions are made in the case of Muslims and Christians because their personal law is entirely different, why should we, though we are numerically small, not have the same...

Mr. Deputy Speaker : The hon. Member need not repeat his arguments over and over again. He has already stated that just like the Muslims, the Sikhs too should be excluded.

Sardar B. S. Man : Sir, may I seek the help of and invoke the good convention that is here in the House that whenever a law concerning the religious institutions of personal law of persons is concerned, the members of that community should be consulted and that their opinion should weigh ? I am invoking that convention. Will not that convention be made applicable to us here ? If that is made applicable, then the whole trouble will cease and I shall sit down. My argument is, if today you pass this law with the help of the majority in the House—may I be permitted to add—the Hindu majority of the House, because for the first time such terms as communities—Hindus and Sikhs—are being used in this debate and that is the primary bane of this law...

Dr. M. M. Das (West Bengal)**:** On a point of information, Sir.....

Sardar B. S. Man : Is it a point of order, Sir ? Otherwise I am not yielding.

Dr. M. M. Das: Is the hon. Member speaking on behalf of the Sikhs of the Punjab or on behalf of everyone in the Punjab ?

Mr. Deputy Speaker : The Member is not yielding. I will not permit any more interruptions.

Sardar B. S. Man : The difficulty is, hon. Members who are not .well acquainted with the law go on interrupting without understanding my point. As I was saying, that was a good convention and.....

Mr. Deputy Speaker : That point has already been stressed by the hon. Member, that against the will of the community no personal law should be touched. That point will be considered by the House. The hon. Member may go to his next point.

Sardar B. S. Man: Then coming to the marriage laws, here the present set of laws are very rigid. I may be permitted to quote here from no less an authority than my colleague here, Dr. Tek Chand, who has been a distinguished Judge. He has dealt with this point in his own lucid and clear fashion. And let me also add, that this quotation is from one who is not a Sikh himself, nor an agriculturist—a non-agriculturist—but one who is well acquainted with laws and with the Sikh laws and the customs and practices in the Punjab. Well, this is what he says :

> "It is well-known that *Jats,* specially Sikh *Jats* hold very liberal views on questions relating to marriage, and even at the height of the Brahmanical supremacy, they did not show much inclination to

be bound by the cast-iron rules laid down in the later Hindu *Smritis* interdicting marriage outside the caste, and prescribing elaborate ritual for the performance of the marriage ceremony. Among them *(Jats),* the re-marriage of widows has all along existed commonly, and *chadar-andazi* in which the ceremonial has been reduced to the very minimum is one of the recognised forms of marriage."

And this is the view held by a learned Judge who was also a member of the Select Committee, and he has attached a minute of dissent on exactly this same point and on these same lines, that if you were to agree to only prescribed forms of marriages which are not sought to be introduced in this Hindu Code Bill, then you will be taking away from its orbit many forms of marriages which are customary and prevalent among the Sikhs in the Punjab. There is the *Kareva* marriage which is not a sacramental marriage. That is common in the Punjab.

Dr. Ambedkar : What marriage ?

Sardar B. S. Man : *Kareva* marriage, where the man and the woman, without calling anyone, with no priest, learned or otherwise, without going through any ritual, without going round the *Granth Saheb* or the fire, simply sit together and have a *chadar* thrown over them and that constitutes the marriage. *Chadar-andazi* also means the same thing.

Shri Amolakh Chand (Uttar Pradesh)**:** Is it a *dharmic* marriage ?

Sardar B. S. Man : No, for the definition of *dharma* changes from time to time. Manu had his definition of *dharma* and there is another definition of *dharma* by Dr. Ambedkar. In this rapidly changing definition of *dharma,* I would rather not seek protection under such a *dharma,* but stick to my secular law which is quite clear to me and which I have been practising for long.

Shri Amolakh Chand : Are the children legitimate ?

Sardar B. S. Man : Quite.

I am conscious of the retort of Dr. Ambedkar that he made in his speech last time. He says that when the people of the Punjab talk of marriage, they talk of many other things which……

Mr. Deputy Speaker : I may point out that clause 8 and other clauses or forms of marriage are not necessarily applicable to the hon. Member. The Sikh community may have customs that bring about the relationship of marriage and these alone will be necessary. Why should we labour that point any further ?

Sardar B. S. Man : My difficulty is, reading his last speech. I find that Dr. Ambedkar has said that *Kareva* marriages will not be permitted.

Then there is clause 8 about other rituals. I may give yet another case where there is neither this *Kareva* marriage nor a sacramental one, but which is still in practice.

Mr. Deputy Speaker : Whatever may be the form of the marriage—may be the covering by a cloth and all that, that is not prevented here.

Sardar B. S. Man : If you will kindly permit me. Sir, I will make my point clear. In this form of marriage, they do not go through any ritual, nor even the flimsy ceremony of putting a *chadar*. If the man and woman have lived long enough in the village as to lead the village community to believe that they are husband and wife, irrespective of the fact that there was no ceremony, they should be taken as married husband and wife. There have been judicial decisions to this effect.

Mr. Deputy Speaker : Even for that there is a presumption under the Evidence Act.

Sardar B. S. Man : No, Sir. I beg to differ from you. Sir, on that legal point. They will not recognise it, if such a marriage does not come either under the definition of sacramental marriage or any other rites and rituals. The emphasis there is upon customary rites. One must have certain rites.

Mr. Deputy Speaker : How long should they live together?

Sardar B. S. Man : There is a decided case. Again, Dr. Tek Chand says :

> "Indeed, the *Rivaj-e-ams* of the districts and the records of the cases decided judicially are full of instances in which mere cohabitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage."

That is the state of the law in the Punjab. As regards these marriages where the man and woman have lived together for a long time…….

Mr. Deputy Speaker: What is the length of the time ?

Sardar B. S. Man : In cases it was decided as seven years, in certain others as 20 and there are cases where it was decided as four or five years also. The validity of the marriage is judged by their day-to-day conduct in village community and not by certain ceremonies. But this form of marriage is not recognised by Dr. Ambedkar. He says "I will not permit this sort of immorality". He calls it "marriages

made easy". It may be easy for me but I am not going to respect certain empty rituals. The sanctity of a marriage must be the attachment of the parties to it and their mutual conduct. It is immaterial whether certain rituals have been performed or not.

Rev. D'Souza (Madras)**:** On a point of information, may I know whether in those cases the conditions requisite to validate the marriage were there or whether the mere fact of cohabitation was recognised, even if there was a previous marriage of one of the parties ?

Sardar B. S. Man : I shall come to that later. I am only talking about forms of marriage.

Mr. Deputy Speaker : The hon. Member has not appreciated the position. The point is when a marriage is presumed, there must be conditions regarding propinquity or that it does not contravene prohibited degrees or that the woman is not already a married woman. Is it an instance of a married woman living with another man who becomes her husband ? All the pre-requisities of marriage must be there : mere cohabitation is not enough.

Sardar B. S. Man : Under the general law, if the other conditions are not there the courts will interfere. That is not within the scope of this Bill.

Mr. Deputy Speaker : This refers to forms of marriage. Even the simple marriage where the bride and bridegroom sit together and a cloth is thrown over them is covered by this Bill and it is allowed. Even if that cloth is thrown away in the ceremony it is allowed. I do not know whether the hon. Member wants to press the proposition that a marriage should be valid whatever might be the degree of prohibition.

Sardar B. S. Man : If a certain custom is barbaric or against public conscience or public morality, I will not for one moment accept that custom. You are giving two forms of marriage, *dharmic* and civil. I am giving you instances of other forms of marriage. You have been kind enough in your interpretation to say that *Kareva* marriages will be included. But undoubtedly certain rituals or rites are involved. I consulted others about marriages where there is no ceremony at all and where the man and woman merely live together long as husband and wife. The question was whether she was already a married woman and her husband was alive. Even if the husband was alive, the fact of seperation was there and if she was still the wife of another man, then it would be an offence punishable under the ordinary law. The

question is about marriages which are presumed to be valid even when there are no ceremonies nor rituals but a prohibition is sought to be introduced in that regard here. In the Punjab people do marry cousins.

Mr. Deputy Speaker: This does not abrogate the provisions of the Evidence Act and this is not inconsistent with that clause of the Act, namely that a man and woman living together was sufficient proof of marriage.

Sardar B. S. Man : After the promulgation of this law, doubts will be expressed by the courts about the validity of such marriges and the only relief given is that the marriage shall be registered. If the Law Minister says that even such marriages, which were not performed strictly but by virtue of the parties living together for a long period and their mutual conduct, they will be considered as husband and wife and will not be forced to go to a registrar to register their marriage, then my apprehensions will be removed.

Shri Tyagi: Both the parties must be willing.

Sardar B. S. Man : Of course, you must have a willing wife and husband. *(Interruption*) My friend Prof. Yashwant Rai asks whether such cases are very common among the *Jat* sikhs. They are common among them along with the Scheduled Castes and specially his own particular caste in the Punjab.

The idea of the present Bill is codification. Codification presupposes the existence of certain laws. If we are honest and want to proceed with the codification, the existing laws should be included there. But this codification under the present Bill is not only a codification of existing laws but so far as the Sikhs and the agriculturists of the Punjab are concerned it is an exclusion of their laws (*An Hon. Member:* Modification) or modification to such an extent that the original is completely lost that it is altogether alien and in many respects obnoxious to us and is thrust down our throats.

Voltaire said :

> "That the more vast a State is in size and composed of different peoples, the more difficult it becomes to unite all together by one and the same jurisprudence."

Only two days ago, the Prime Minister replying to a question why there was no national dress in India said that in a vast country which stretches from the borders of Central Asia to Kanya Kumari in the south, different people are used to different customs

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and it is very difficult to have one national dress. What applies to physical clothes applies equally to legal clothes—legal clothes which are sought to be tailored by Dr. Ambedkar. When a similar attempt was made before, considering the inadvisability of such a thing, it was given up. The Punjab Laws Act has almost been a Bible for us, incorporating the principle of customary laws : the present form of the law which rules and holds the field is section 5 of the Act. Mind you, for so long a time as from 1872 we had had this law in operation and now suddenly at the fag end of the session, when we have not even comprehended the exact consequences of this not very revolutionary, but a completely novel and retrograde law, we are called upon to accept it. I for one have failed to comprehend it because my structure of society has been built upon pretty good customs which have held the field for so long, in regard to succession, property of females, marriage, divorce, dowry and so on. It contains every conceivable item of legislation. It says:

> "Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority shall be the customary law."

When on that occasion such an attempt was being made, another person as intelligent as Dr. Ambedkar, Sir George Campbell, who was then in charge of Law, made these observations which are applicable even today. The bill sought to lay down that Hindu Law and Muslim Law should be applicable to the parties concerned. The amendment was successfully introduced and hence the present law, that is section 5 of the 1872, Act based on that amendment, namely that the Hindu Law or the Muslim Law will be applied only in the absence of customs. Sir George Campbell said:

> "If the Council would accept the amendment of which he had given notice, it was his impression that a great part of the objections to the Bill would be removed..... If enacted ..... that the Muhammadan Law in cases, where the parties were Muhammadans and the Hindu Law in cases where the parties were Hindus, should form the rule of decision, except where the law had been altered, or abolished by legislative enactment, or was opposed to the provisions of the Act. He was quite willing to admit that certain simple rules, excepted from the Hindu and Muhammadan Law had

> to a certain extent had force in the Punjab ; but it appeared to him that a section of this kind would import into the Punjab, not the simple law of the Province but the whole of the complications of the written Hindu and Muhammadan Laws and the whole of the voluminous case law comprehended in the decisions of the Courts all over the country. That he regarded with the gravest apprehension. He should so regard it, not only because it would open a wide door for lawyers, but because it was not the law of the Punjab. Not one out of ten—perhaps not one out of a hundred persons in the Punjab was governed by the strict provisions of the Hindu and Muhammadan Law."

An attempt was made then also to codify but may I say that codification makes the law rigid whereas custom is not rigid ? Codification and legal enactments come from the top whereas customs represent the living conditions and the wisdom of the community. Customary law owes its development and its strength to the fact that it comes from the community down below and grows upwards ; it is not reactionary as enacted law is, which restricts growth. Whereas the enacted law restricts growth, the customary law imbibes the best points and the practicability of the situation.

I will finish by saying that those who believe in the present sort of codification should be alive to the dangers of such a thing, the effect of which is always to hinder the development, independence of judgment and independence of will of the communities, which vary according to the varying needs and the spirit of the people. I say, with all due respect to Dr. Ambedkar's ability to fashion out clothes, legal clothes—a sort of *Amritdhara* which will suit every disease from the south to the north—with all due respect to him, I beg to say that the clothes that he is trying to fashion out and tailor will be either too loose for southerners or be too tight for the northerners. It is much better that he should look to my size—look at the size of the society and its needs—and fashion and tailor the clothes accordingly and not give me ready-made clothes, ready-made medicines, a sort of *Amritdhara* for every disease. I request that no attempt should be made upon me as a Sikh to foist any law which is alien and repugnant to my spirit. I for one will not accept it, will not at any rate respect it because I have not respected the ancient Brahmans and much less shall I respect any modern Brahmans.

***Pandit Malaviya :** I have not so far taken any time of this House at any stage with regard to the Hindu Code Bill. I had been hoping all this time that the evil day would never come when we would be faced with the need of seriously applying ourselves to a proposal of the nature that is before us. I had known, and many of us had known, the intense desire and keenness of some people in this House and outside, it to have the Code enacted, but we had somehow felt that the obvious could be seen, that the preponderating public opinion throughout the length and breadth of this land would not be ignored, and even while the idea was being toyed with, no serious attempt would be made to put on the statute book a Bill which should affect the very foundations and the entire fabric of the society of the people of this land, in the haphazard manner in which it has been proposed to be done. People have been agitating in this country either for one view or the other and many who have felt distressed over the prospect of such a law being enacted have been doing what they could to draw the Attention of the Government to the widespread resentment and dissatisfaction against it. But personally, I have not once stood up anywhere on a public platform, not once have I tried to take part in any such agitation, in the hope and faith that a thing so wrong in principle, so atrocious in details and so uncalled for in expediency would never come up seriously before the House. But one lives and learns and I am now faced with the spectacle that in Parliament which is now on the last lap of its journey, a controversial measure which is going to affect the lives of more than 300 million people is going to be taken up and an attempt is going to be made to enact, it and to put it on the statute book to the teeth of fierce opposition to it. I do not say that there is nobody in this country who supports the principle of this Bill (*Pandit Maitra* : Very few). I do not wish to say that there are not people who are honestly of the opinion that it is in the interests of society that such a law should be enacted. I have no quarrel with them. I am a Hindu and intolerance in any shape or form—intellectual or ideological—does not come to me. If, therefore, there are people in this country who feel that a measure of this nature or that a measure of even a more revolutionary nature should be applied to society, I may not agree with them—I may regret their opinion—but I can have no quarrel with them. I will, therefore, not take the position that there is no one in this country who wants this Bill. But it is obvious and it is something which only those can fail to see who would not see, that by far the largest majority of the people are not only not in favour of this Bill.....

*P.D., Vol. XV, Part II, 19th September 1951, pp. 2872-96.

Some Hon. Members : Question.

Pandit Malaviya: .....but are feeling seriously disturbed over it. They are today nonplussed and do not know what they should do in the face of the danger of such an enactment being made. (*Interruption*). Some friends of mine, tamely and in a parrot-like manner, probably by the force of habit, go on saying 'question'. I challenge them in all humanity to come and question my statement anywhere in this country. I have expressed the opinion in a meeting of the congress Party Members of this Parliament at another place that in a matter of such universal importance, even if it be not legally wrong to make any enactment in this way, it is the height of moral injustice that we should take up such a matter without giving the amplest possible opportunity to those who are affected by it to express themselves upon the issue. I have said that in a matter of this nature, the very minimum that we can expect should be that the issue should be put before the electorate at a General Election or that indeed a referendum should be allowed to be taken upon it.

Shri Bharati: On monogamy ?

Pandit Malaviya : My esteemed friend Shri Bharati has obviously one and only one stale card to play on all occassions, right or wrong, relevant or irrelevant. I shall come to that card in due course and shall show what value that hand of his has. But the interruption by the word 'monogamy' is not going to take away from my argument that in this matter the only right course for us to follow is that we should have a referendum in this land to allow people to express themselves on this issue and then if we find that there is even a fair minority— I go to that length ; my challenge is not couched in any spirit of doubt or fear—I say that if as a result of a referendum even a substantial minority of the people are in favour of such a measure, by all means let us sit down seriously to the task of framing it. If that be not possible. I would ask my hon. friends who question my statement to persuade the Government of the day and the law Minister of the day to allow half a dozen people to resign their seats—I am prepared to be one of them—and let us have bye-elections in four weeks' time distinctly on the issue of this Code.....

Shri Bharati: On monogamy ?

Pandit Malaviya: .....and if out of those six even in a few constituencies in those bye-elections the protagonists of the Hindu Code Bill get returned...

An Hon. Member: In north India ?

Pandit Malaviya: Anywhere in the whole country—if they get returned, then I shall be prepared to withdraw my opposition.

Shri Munavalli (Bombay)**:** Challenge accepted.

Mr. Deputy Speaker : There are two sides to the picture. Let him proceed.

Pandit Malaviya: I do not mind the interruption. Words are of two types. One is words which are mere sound; the other is words which have a meaning and when any Member says 'Challenge accepted' I would wish he meant that and not merely created the sound.

Shri Munavalli: I mean it.

Pandit Malaviya : My request is this. Let the government, let the Law Minister, put the Bill to that test and if they are willing to do that, then I am willing to propose—and I hope other Members also who feel like me will be willing to agree—that we should have a session even before the elections for a week, after the results of those bye-elections are known, to work in accordance with the results. But the Members who say that they accept this challenge say it, if I may say so without meaning any disrespect, knowing that they will have no occasion to be put to the test. The only way in which we could decide about this matter is by one of these courses. If we are not going to do that, then I do not know how to accept the questioning of my statement that by far the largest majority of the people in this land are entirely opposed to the provisions of this Bill. (*An Hon. Member:* Question.) And when I say this, I am not referring merely to those people who are called "orthodox", but I am referring even to the most advanced of the advanced people of this country, people who find themselves weak and wanting in the strength to stick to the restrictions which time and experience of the elders of this nation have imposed upon us, who wish to have the easy way of life, who wish to have the good of both the worlds for themselves, who wish to remove restrictions and restraints which have descended through the ages, through the millennia that have gone before us reaching back into the dim unknown past of human history; the traditions, the culture, the life, the ideology, the principles of the one race which can claim with pride that it has had a continuity of that tradition from time immemorial. Those gentlemen today are impatient and I wish to submit that even from their point of view, from the point of view of

even those who are impatient of even the existing restrictions, who would rather liken our society to an aping of some other society somewhere else, irrespective of the suitability or otherwise of such application to our particular genius ; even to them this Bill cannot be acceptable. It is on that basis that I make the claim that by far the large majority of people in this country are opposed to it. The orthodox people, those who have their roots in the traditions of old, are upset over it. But those who have a certain amount of social liberty.....

Dr. M. M. Das: On a point of order. The hon. Member is only repeating what has been said *ad nauseam* in this House. He has no new argument; he is only repeating what other Members have said.

Pandit Malaviya : I had heard that in the case of a certain type of mankind, which is often under the influence of a certain intoxicating habit, even some of the best victuals placed before him bring him nausea ! I am not surprised at my hon. friend !

Shri Bharati: Will it not facilitate clarity of understanding if the hon. Member confines his remarks only to the subject under discussion, namely, marriage and divorce ?

Pandit Malaviya : I have probably not the clarity and the ability of my hon. friend Mr. Bharati.

Mr. Deputy Speaker : I myself wanted to suggest to the hon. Member that now that the scope is limited to marriage and divorce, his observations may be confined to those. The hon. Member may feel that the points made by him may not have been put as forcibly as he is doing at present. Anyhow some of them have been covered : he need not go into them at great length and may confine his observations to points which have not been touched.

Shri R. K. Chaudhari: I would respectfully like to point out that even if there are repetitions, we should like to know the opinion of a distinguished person like Pandit Malaviya.

Dr. M. M. Das : On a point of privilege—the hon. Member is making a distinction between one Member and another.

Pandit Malaviya : I lay no claim to that distinction : I do not think any hon. Member need be frightened by it.

Mr. Deputy Speaker : I expect this debate to conclude today ; let there not be any more interruptions.

Pandit Malaviya : I am greatful to you for your guidance. What I submit is that the Bill may have one clause in it relating to the social

structure of the Hindus or may have a hundred clauses in it relating to the social structure. But if it is going to affect the social structure of the Hindus, nobody can proceed with the matter unless he discusses that social structure and the way that clause is going to affect it. Social structure cannot be taken piecemeal in watertight compartments. It is not practicable.

After the discussion that has gone on before, I have a feeling that it will not be quite possible and correct to take a lop-sided attitude about one particular matter alone and leave the general aspect out. But I might assure you, Sir, that I shall throughout be guided by yourself and if at any stage you should think that I should not carry on with any particular argument that I may be making, I shall at once obey you.

It has been said that this Bill will now be confined to the two items of marriage and divorce. As the Hindu society stands, its entire structure rests upon the foundation of marriage. There is nothing in Hindu society which can be separated as unconnected with the marriage system of the Hindus. It is, therefore, not possible to discuss the marriage section of the Hindu society-without referring to the general aspect of the society as a whole. Whatever I was saying applies directly to the item of marriage and divorce also. What I was saying was that it is therefore as much the orthodox section of the people who will be opposed to this measure as the others—about whom so much has been said by some hon. Members in this House yesterday and the day before, as forming nearly eighty per cent of the population, among whom it was said the very provisions which have been proposed in this Bill exist today. I have my own doubts if that is so. For the large majority of those people who have today facilities of divorce and easy marriage, the provisions of this Bill are going to make a world of difference. I am not expressing any opinion of my own on the merits of these proposals. I am merely mentioning that to the simple men living in the villages today, who have not had the opportunity and benefit of the same growth, intellectually, morally, emotionally and spiritually, as some other members of society, like my esteemed friend the Hon. the Law Minister, have had—to them the habit of restraint, the habit of a discrimination between the finer shades of the good and the better, the bad and the worse, does not come so normally and spontaneously in some matters at least as it does to the others. Hindu society has been divided into groups not with any inhuman or malicious object of injuring any section or doing any

injustice to any section. I do not wish it to be misunderstood that I do not believe that injustice has been done to some sections of it. Injustice has been done, hardships have been inflicted, atrocious hardships have been inflicted, and there will be no reasonable man who will hold any brief for the same. But I am talking of the principles and the broad concept on which those divisions were based. They were not meant to injure, they were not meant to inflict any hardship.

Shri Munavalli: But what has been the effect ?

Pandit Malaviya : The effect will take me long to describe, because the effect has been varying from age to age and if my hon. friend will take the trouble of reading through the pages of history he will know them well enough for himself.

Mr. Deputy Speaker : But is a discussion on that point necessary for marriage and divorce ?

Pandit Malaviya : What I was wishing to point out was that in the very nature of things we can only expect one thing from one individual and another thing from another. If any abstruse point of law arises today, we can reasonably and legitimately request our learned Law Minister to put us wise on all aspects of it. You may not be able to get the same information and the same light from an ignoramus like myself. (*An Hon. Member:* No, no.) (*Another Hon. Member*: That is only humility.) There may be equally another thing about which another individual may be able to tell us many things but about which my esteemed and dear and learned friend Mr. Bharati might prove a complete ignoramus. In society there is a class of people to whom the real zest of life, the real zest of existence, the incidence of life from moment to moment, from hour to hour, from morning to evening and from evening to morning, is, if not the in-all and out-all, a very large portion of the totality of their existence. For them today's marriage and divorce laws have been framed with a view to simplicity and easy availability. A man can today, or a woman can today discard a marriage relation and take up another almost in the twinkling of an eye. Such people will have to wait for months, they will have to go through law courts, they will have to go through the entire gamut of procedure before they can do the same under the provisions in this bill. I am not expressing any opinion on the merits of the matter. I should personally feel happy at, and I should like to congratulate the Law Minister for having conceived that improvement, but I am talking of the practical effects. In the practical effect there will be murders in the villages.

Dr. Ambedkar: We have enough police.

Pandit Malaviya : For a man who is still in a large measure in the animal stage.....

Shrimati Renuka Ray : Question.

Pandit Malaviya : I do not say this in any sense of disrespect. I am only talking as a sociologist. If those men find new impediments put in their way, impediments to which they have not been used, to which they are not accustomed, and they find themselves thwarted in a tiresome manner, they may not have in themselves that much of restraint, they may not have in themselves that much of development and control that they should wait for the law, and society may be faced—among the eighty per cent of whom so much has been talked about—with an upheaval which is probably not even imagined today. Therefore, I said that this Bill is not only not welcome to those who, like me, would rather that the traditions which have come down from ages past should be respected and upheld, but even to those who are going to be affected by it in a much larger and more immediate measure. I may submit respectfully that some of the Members of this House who have been so loud and enthusiastic with regard to the provisions of the Bill have little in common with those people.

Dr. Ambedkar : Not even me.

Pandit Malaviya : Certainly not the Hon. Law Minister ! The Hon. Law Minister has been likened, even profanely, to no less a sage than Manu himself and I am reminded of a *shloka*. (*Interruption*) Somebody asks me why I am jealous. Unfortunately or fortunately I am not so built that I should have the privilege of being jealous towards the Hon. Law Minister.

Dr. Ambedkar: How can a Brahman be jealous of an untouchable ?

Pandit Malaviya: Better tell them ! I am reminded of a *shloka* where Kumbhakarna asks Ravana (*Interruption*). If hon. Members will just bear what that *shloka* says, probably they will feel slightly better human beings than before. Kumbhakarna asks Ravana why in his attempt to win over Sita's mind, with all his demoniac powers of changing his appearance, he does not take the shape of Rama when going to her, and Ravana says : "The trouble is, the moment I take the shape of Rama or think of him, the mere association with the thought of Rama makes it impossible for any evil thought to come

into my mind ! (*Hear, hear).* (*Hon. Members :* Repeat the *shloka.*) I will repeat many *shlokas* if my hon. friends will get me the time for it. Similarly, about Manu. I was saying that if we can expect a certain thing from members of this House—of course, there can be no possibility of their needing to go through divorce in matter of minutes—we may not hope that the same thing will be done by those 80 per cent of people also. Therefore, we should be cautious in our approach to this matter. If anybody can controvert that aspect of things. I would like to hear him do so.

I, therefore, repeat that this Bill is not only disapproved by the orthodox sections of the people but also by far the largest majority of the inhabitants of this land. (*Some hon. Members* : No. No.) Somebody says, "For other reasons than what you have stated". May be, but the fact remains, that whatever the reasons it is not approved by the large majority of the people.

I shall come to the Bill itself. It has been said that as only Part II of the Bill is now to be proceeded with, it is not necessary now that this Bill should be called the Hindu Code Bill. Indeed, irrespective of the fact whether the other Parts were excluded from it or not, personally, I should have had a little less objection to the Bill if it had not been called the Hindu Code Bill. In our Constitution we have given the name "India, that is Bharat" to our country. Why was this Bill not called the Indian Code" ? I am not going into that question that it should apply to everybody. I am not concerning myself with that. I am not saying this on that basis. But this country being named "India", if this code, had been called the "Indian Code", it would have had a different meaning and import. Once we say the "Hindu Code" the entire picture of what that word denotes comes to the mind. We must, therefore, know and keep into view what the word "Hindu" means. It is a difficult word to explain in a sentence. But if there is one feature in Hinduism which one might mention as of outstanding pre-eminence, it is the practically limitless tolerence and catholicity of that system. Our Prime Minister, Pandit Jawaharlal Nehru, has himself talked of Hinduism and has said that it is probably best described by saying that it rests on the principle of live and let live. We have among the Hindus the most diametrically opposed viewpoints. We have in the highest caterie of sacred literature and philosophical schools the six *Darshanas,* one of which sparkles with the brilliance of the razor-sharp incision and acumen of the intellect

of supermen and giants like Jaimini. Shankar and Kumarila—I do not wish to use any adjectives of praise for them because it will be difficult to find suitable words—and on the other hand, it contains another system which is so obtuse, which is so crude, to say nothing worse, that it would refuse to see or understand anything which is not strictly before its physical eyes. The poor Charvaka, with the palm of his hand up before him, would refuse to understand that the back side of his hand also exists because it would not be *pratyaksha*. . . .

Dr. M. M. Das : On a point of order, we have not come here to hear lectures on Hindu philosophy and ancient *rishis*.. . .

Mr. Deputy Speaker : Order, order. I find the hon. Member is very impatient. He must have consideration for the other side of the view. I never expected that the hon. Member would go on interrupting. I repeatedly say that this is a contentious matter and we are allowing sufficient time. I am also alive to the fact that a number of hon. Members have spoken. I am not concluding the debate now. The less the number of interruptions the greater the chance that he will finish it early. Otherwise, he will demand another day.

Pandit Malaviya : I was only pointing out the wide diversity and catholicity of philosophical and methaphysical thought prevalent among the Hindus. I wish there were no need at all for anybody to talk of the philosophical side of things. I wish one could feel that it was unnecessary. But, from such remarks it seems it is unfortunately necessary. What I was mentioning was that even in the *Darshanas,* while we have the pure *Vedant* on the one hand, we have the drunken reveller of a Charvaka philosopher, indulging in the five *makaras* ! I shall not go into those five *makaras*.....

Some Hon. Members : Go on. go on.

Pandit Malaviya : .....because apart from my own reasons of decency, probably I may take it that some of even those Members who may not be deeply interested in philosophical thought might be familiar with them !

Mr. Deputy Speaker : How are they useful for the discussion on this subject ?

Pandit Malaviya: What I was trying to point out was.....

Dr. Ambedkar: I submit the *makaras* are very useful.

Mr. Deputy Speaker : Will this in any way corrupt the *makaras* ?

Pandit Malaviya : We have that diversity even in the principal *Darshanas*. Among them, again, we have the *Astik Darshanas* and the *Nastik Darshanas*. We have *Darshanas* which have talked of the monotheistic principle of *Parabrahma* and *Brahma* and *Jiva* and also which have talked of the atheistic philosophy of *No-Brahma* and *No-Veda* and No-God. We have in other spheres also equally diverse opinions and diverse state of things existing. There are some people today who find it fashionable to remind us that there were certain *rishis* and other among the Hindus who were beef-eaters. Side by side with that, Hinduism is replete with a universal reverential regard for the cow. We have in the Hindu society youthful marriages; we have also in the Hindu society youthful *sanyasis*. We have in the Hindu society the most austere and difficult to imagine *tapas;* we have also in the Hindu society the most luxurious and lavish enjoyment of the senses. We have in the Hindu society the Brahman ; we have the *chandala ;* not the Chandala for whom we have only restrictions and impositions, but the *chandala* for whom rights and privileges have been prescribed, just as for the Brahmans (*Interruption*).

Mr. Deputy Speaker: It is an offence hereafter under the Constitution to call any person a *chandala* or an untouchable.

Pandit Malaviya : There are so many speakers around all at once, that I am unable to hear you, Sir.

Mr. Deputy Speaker: Apart from any constitutional aspect, reference to *chandala* is no longer advisable. It has been made an offence under the Constitution.

Dr. Deshmukh: He is only referring to history.

Mr. Deputy Speaker : There may be some history, but all history is not very good to mention. Let us forget some history.

Pandit Malaviya : I was referring to it not as to an individual, but as to a system in the past. However, I will abide by what you have said.

Dr. Ambedkar : Why should you ?

Pandit Malaviya : The hon. Law-Minister asks, why I should. Only because I am a law-abiding Member and not the other name that I had been mentioning.

I was saying that in Hindu society we have had that variety of things existing side by side in honour and in peace. That has been the great feature of Hinduism. But that catholicity and that tolerance was possible

only because there were some basic principles, fundamentals which went to form the root of all things which were first settled and ordained, and which have been maintained through the ages without question or dispute ; not narrow sectarian dogmas or rituals, nor any controversial things or rules, but certain basic fundamental principles which were considered as *sine qua non* of the continued, stable and smooth existence of society. These principles may be called by any name ; but they remain the eternal bedrock upon which any healthy society must rest. In this country, the name given to these principles was *sanatana : sanatoria* not meaning, unfortunately, as a learned speaker said yesterday, that which is always changing and *nitya nootana,* but as something which has always existed. Therefore, if we undertake the task of making any changes in the structure of Hindu society, we must be careful that, tamper as much as we might with the outward forms and paraphernalia, with the leaves and branches, we do not apply the axe to the root of the tree itself; that we do not disturb and that we do not uproot the fundamentals, the basic principles upon which society has been based, and which have carried it through the ravages of time as nothing else has carried any other society known to man in the world. Therefore, we must first understand what those basic principles are.

I was slightly taken aback when I heard it said by no less than three august personages who go to form the Government of this country today, that the provisions contained in the proposed Hindu Code Bill are in accordance with what is found in the Hindu *Shastras*. I have also heard it said that a profound study has been made of those *Shastras* in order that this Bill might be put up in this form. One would naturally hesitate to cross swords with men of so learned a disposition. But the Hindu *Shastras* have been the property of the world for the ages. Many people have read them or can read them. With the very limited knowledge that I am privileged to have of them, it has not been possible for me to find justification for that statement so far. I would, therefore, suggest that if it is the claim of the Government that they are basing the Hindu Code Bill upon the sanctions contained in the Hindu Shastras, then we should proceed on that premise. It will be different, however, if a wider stand is taken and it is said that it is not the Hindu *Shastras,* it is not the sanctions contained in them, but it is the wisdom and the whim and fancy of the farmers of this Bill, it is the inclinations and the desires of those who are at

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its back, which have been the determining factors in the preparation of its clauses and details. To the best of my knowledge, no such statement has been made so far. I will, therefore, proceed on the assumption that the claim remains that the Bill and its provisions are based on the Hindu *Shastras*. If that is so, I would like very much to get a clarification from the Law Minister as to how that point is to be determined, as to what is said on a particular point in the Hindu *Shastras* and what the meaning of that statement in the *Shastras* is. I know what I am saying must mean mere waste of time for a man like the learned Law Minister, because, I have no doubt, that he is familiar with the meaning of what I am saying. But we the Members of this Parliament are here to legislate on a vital issue, and if we are going to legislate on a matter of such universal importance, and if we are going to do it on the basis of a certain thesis, namely, that it is being done in accordance with the tenets of Hindu *Shastras*. I feel that it is our duty that we the Members of this House should then keep in mind the rules, the methods, and the recognised procedure by which the meanings of the *Shastras* and their words are interpreted. The *Mimansa* applies itself to that high purpose, because in a society like that of the Hindus, where the law came not from a Government or from a Minister, howsoever high and mighty.....

Shri Sidhva (Madhya Pradesh)**:** Please address the Chair.

Pandit Malaviya : My hon. friend Shri Sidhva asks me to address the Chair. I have been doing nothing else. I wish Mr. Sidhva would not forget so easily.

The Members of this House should know that in a society like that of the Hindus where everything has been based—for, God only know how many millions and millions of years, or thousands and thousands of years—upon certain texts coming down through the ages; where we had not the printing presses or the printing paper, where everything had to be committed to memory and had to be passed down from the teacher to the pupil and from the sire to the son, where everything depend upon the correct pronunciation and intonation and upon the correct text and upon the correct interpretation of old and ancient words and *mantras,* where new codes and new treatises, not printed on paper, but in the minds and memories of men came up from time to time and had to be assigned their right importance and place; in such a society, disaster would have followed if the most minute, if the most exhaustive and positive rules had not been laid down for the

interpretation of those texts. And in the *Mimansa* we have it laid down how any text of the *Srutis* or the *Smritis* should be interpreted. It is also laid down that the meaning of the law cannot be known merely by looking at a sentence at one place. So many tests—proving tests—have to be applied to it.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

If, therefore, it is the claim of the government that the Hindu Code Bill is based on principles and tenets contained in the Hindu *Shastras,* my earnest request is that we should carefully and according to the rules, examine the various provisions and then find out if they violate what is contained or laid down in the *Shastras* or not. My humble submission is that they are not only not in conformity with Hindu *Shastras,* but go diametrically against them. (*Interruption*) Somebody is saying at my back that I am now expanding. I wish my friend would understand that if I wished to expand these ideas it would take days to finish.

Shri Munavalli: That is your intention also.

Pandit Malaviya : We have known of the concept of omniscience. I find that there is a new phenomenon of it here, who knows the minds of others.

Shri Munavalli: Certainly.

Pandit Malaviya : I congratulate the hon. Member. I wish to submit that I am trying to confine myself as rigidly as possible to the shortest possible limit. I am saying this with a sense of responsibility. Let any Member of this House who would like to have an exhaustive and expanded exposition of the points I have made, let him do me the honour of coming to me after this sitting and I will then make him see how much there is to say, how much there is to study, and ponder over each one of the points that I am only briefly mentioning here.

I was submitting that if we have to go by the *Shastras* the whole matter simplifies itself, because there will then be no room for any difference or controversy. If the two parties to a case have agreed upon a measuring rod and there is no dispute about it, it should be easy then for any set of normal people to take up that yardstick and measure the cloth to the mutual satisfaction of both. If it is agreed that it is on the basis of the *Shastras* that we are going to enact this law, according to the rules of interpretation so clearly laid down, it should be easy for anybody and the hon. Law Minister to sit down, go through clause

by clause and determine. (*Interruption*) I see that the Hon. Law Minister has a very clear vision. The Law Minister or any other member or even myself may have any view of a matter. But when the hon. Law Minister and others agree that there is a yardstick by which a piece of cloth has to be measured, there can be no room for any difference or controversy. (*Interruption*). I have already mentioned but obviously it has not yet been sufficiently mentioned for my friend Mr. Bharati that there is a yardstick, which has come down to us from the ages, (*Shri Bharati*: The measurement differs so widely) according to which the interpretation of the sacred texts has to be made.

Shri Bharati: The difference in the yardstick is one inch to a mile.

Pandit Malaviya : My friend Mr. Bharati says that the difference between the yardsticks is one inch to a mile. I do not know if I can say anything about that remark, because it carries in itself the visible and the obvious, that my esteemed friend is altogether unaware of the nature of the yardstick I have mentioned. There would be no question of any difference, not even one in one millionth of a millimeter. Therefore, if that can be agreed upon, I think, all controversy on this matter would end and there would be no need for us to say anything more at this stage. We can then easily leave it to the hon. Minister. I can place the entire matter in his hands not only as the umpire or the judge for those who are in favour of the Code but also for those who, like me, want him to go through the clauses, item, by item according to the text of the *Shastras,* interpret them through the *Mimansa* and apply them to the provisions of this Code and say if they do not militate against them. If he says that I shall be satisfied and I will offer no further opposition. I do not think anything more fair or reasonable could be said. If however, that cannot be done, the least we could ask for is that the claim that the Hindu Code Bill contains provisions which are all based upon what is contained in the *Shastras,* should be completely given up and withdrawn, so that the millions of our people who may not have the opportunity of being critical enough to examine the basis of such statements may not be misled by such entirely wrong and misleading statements and they may not fall into that dangerous pit. Probably the Bill may have been prepared innocently, but it has within it the potentialities for untold and immeasurable mischief. If that also cannot be done there can be no other way for Members of this House or those of them who feel like me, but to examine all these proposals in extensive detail in the

light of what is said in the *Shastras* with regard to them. It will be a long process, because, if the claim is made that what is stated is according to what is laid down elsewhere, it can only be given up either by mutual agreement or by the weight of facts as distinct from opinions ; and establishing those facts can only mean that on every clause and every sub-clause, on every subject and almost on every word, this House should have the opportunity and the benefit of having its attention drawn to the relevant texts in the wide range of *Shastras* and law books of the Hindus. I do not know if that will be considered possible : I have no doubt it must be permissible ; but I do not know whether that will be considered possible and practicable. I would therefore beg the Government not merely in the interest of fairness and justice towards the subject which is before us and towards the people who are affected by it, but indeed in the interest of the progress of this Bill in this House, that they should re-examine their position on that point and either make up their minds to proclaim to the world that the Hindu Code is not based on the Hindu *Shastras* and does not care for what is laid down therein, and is the product of the wisdom and fancy of those who have prepared it; or, they should adopt the procedure which I have suggested, *viz.,* have a thorough and nonpartisan examination made of each of the clauses and then bring up before this Parliament only those which, it is incontrovertibly agreed, are in accordance with the *Shastras* that have prevailed since so long.

There are certain other difficulties also in this matter. This bill, it is now said, will confine itself only to the subjects of marriage and divorce. But my difficulty is that, that fact by itself does not make the slightest difference in the nature of this question. If there were any part of this Bill which was altogether uncontroversial and if that were taken up, I would understand that the same might have been allowed to go through this House without much difficulty or controversy. But can there be anything more fundamental, more controversial than the question of changing the laws of marriage among the Hindus? I submit it is not possible to think of anything more contentious. Somebody may say that the other parts of the Bill are more contentious—I am quite sure somebody else will equally emphatically say that the part relating to marriage and divorce is the most controversial. Therefore, the fact that it has been decided that the progress of this Bill will remain confined to these parts, does not make any change in the fundamental aspect of this question. We have therefore to be very cautious in

proceeding with it. I mentioned that the vast bulk of the people are against it, but there is something even more fundamentally wrong in the situation. The Hon. Law Minister himself at one stage, when on a previous occasion this matter was before this House, said in reply to an inquiry by an hon. Member that it was not intended at that time that his Bill should apply to the people of what was then called the Indian States. And in his usual, careful and accurate manner he said that if at any time the States came into the picture, the matter would have to be gone into entirety before it was taken up—or something to that effect; I am not quoting his words. Everyone knows that this Bill was not published in any Gazette of those States. It was published in the Gazette of the Government of India, it was published in the Gazettes of some of the Provinces, but because there was not thought to be any occasion for it, it was not published in the Gazettes of any of the States. And the people of the States did not therefore find themselves called upon to consider the matter; in fact, they had no concern with it whatsoever. What has been the result ? Today, by the fact of our new Constitution, all that territory forms part of the land and whatever is passed today is going to apply to the people of all those areas. Does anybody pause to consider the preposterous nature of the situation ? One-third of this country—not a little portion here or a little portion there—but whole one-third of this vast country.....

Shri Munavalli: It is not so, because many States have already been merged in the provinces.

Pandit Malaviya : My friend says "It is not so, because many States have been merged in the provinces". I dare not controvert so wise a statement, but I thought that even before they were merged and surely since after their merger no publication of the Bill has been effected anywhere.

Shri Munavalli: Question.

Pandit Malaviya : My friend questions that statement. I think he is beyond me. One-third. I said and I repeat of this great sub-continent is going to be subjected to a law which is going to affect fundamentally the very foundations of their life and existence without their having had an opportunity to see what it is.

Shri Lakshmanan : (Travancore-Cochin.): May I point out that in some part of States the Bill was published—in Travancore-Cochin, for instance ?

Shri Bharati : I wonder if the hon. Member knows about any of the other States also.

Pandit Malaviya : I do not belong to that school which refuses to see anything except the palm of its hand. I do not mind the interruptions because I know what I mean and I know what I am saying. I am not saying it merely because I wish to say something or because I should say things which would please anybody, but because I believe in what I say. No amount of interruption, no amount of cries of 'Question' can dislodge the truth. If a thing is true and correct, then whatever anybody may say and these 'Questions' only help to clarify matters.

Shri J. R. Kapoor : Interruptions are helpful.

Pandit Malaviya : Whether they are meant in a spirit of helpfulness or otherwise, I do not in the least degree mind them. If on a matter of such importance and gravity there are indeed any doubts in anyone's mind and if any questions suggest themselves to any Member, I feel, on the contrary, that the object, the very ideal, of a parliamentary system of legislation would be defeated if that Member did not have the opportunity to raise his doubt and to ask his question, and if anybody who is on his legs, does not attempt to reply to his best ability to the question that is asked. I therefore do not object to interruptions.

Shri Radhelal Vyas : May I ask the hon. Member to enlighten us as to how the law of mongamy and divorce which is in force in Madras and Bombay has affected the Hindu society ?

Mr. Chairman : May I ask the hon. Member not to lose the thread of his argument and not to be misled by the interruptions ?

Pandit Malaviya : I am very grateful to you, Sir, and I assure you that I stand to no fear of being misled. I was saying that in all these States people have had no opportunity at all of knowing what this Bill is. It is possible for me to go into this point at great length, to go into the well known and universally accepted principles and methods of legislation and to point out the monstrous impropriety of such a state of things. But I believe that instead of doing that I should merely draw attention to that fact and hope that Government will still see how grave an injustice is being proposed to be done in that manner and would find out if they can yet undo it to some extent atleast, if not wholly. It cannot be possible now, if the Bill is to be proceeded with immediately—as the Government have declared—for it to be circulated or published for the information of those people. I will, therefore, not waste time in suggesting that procedure.

I happen to have the privilege of having by my side a sister who is all the time helping me by murmuring something or the other into my ears.

Shrimati Renuka Ray : I was pointing out that this was the best speech in favour of bringing in the reforms contemplated in this Bill.

Shri Munavalli: I want to enlighten my friend over this matter because...

Sardar B. S. Man : It is now the time of the hon. Member who is already on his legs to elighten the House.

Pandit Maitra: The hon. Member has raised a very important point that the Bill was not published in the States...

Mr. Chairman: I do not know why the hon. Member should advocate his cause.

Pandit Malaviya : In view of the fact that the Bill has not been published in the States and is now going to be applicable to them also in all probability, something should be done to redress that glaring injustice. How it can be done would probably be best devised by the hon. the Law Minister. As I said, it is no use making an impracticable, theoretical suggestion at a stage when it is not feasible. I, therefore, do not say that this Bill should now be published or circulated for their information. But, probably, we can devise some other way by which that difficulty might yet be overcome, at least to a degree. And I would suggest for the consideration of the Law Minister—not as one who is opposed to the Bill necessarily, but as one with whom, I think, he may find himself at one on this issue—that the people of such a vast portion of the country should not have a clear and legitimate grievance of that nature. I would suggest to him to consider this proposition at least with respect to those States, if not for the rest. The amendment of which I have given notice and which I have moved says that this Bill should apply to anyone only after a referendum has been taken in the State to which he belongs and, in accordance with the result of that referendum, the Legislature of that State has decided that the Bill should apply thereto. I shall come to that in due course. But may I suggest now—whether that amendment of mine is accepted in its entirety or not—that the hon. the Law Minister might consider the propriety of providing in the Bill that at least with regard to the parts of the country which were then called the Indian States, where this Bill had not been published, this Bill should not come into force unless,

after due publication and circulation, it has been considered in the Legislatures of those parts and the Legislatures have decided that it should apply to them. That will at least remove this glaring fault, the glaring omission which stares us in the face today.

Shrimati Renuka Ray : And let us have the tyranny of the Brahamanical society for the next thousand years !

Pandit Malaviya : My esteemed sister says "Let us have the tyranny of the Brahmanical society for the next thousand years". I can only wish and pray that not for a thousand years but for eternity, not only my good sister but the whole world might rise to the level and concept of the Brahmanic ideal—the ideal which has always stood for fairness and justice to all, which has stood for the performance of duties and actions due to others rather than insistence upon the rights and privileges of its own, which has enjoined not a life of aggrandizement, not a life of self-interest, not a life of low thinking and low living, but a life of noble and lofty idealism and practical selflessness where the Brahman more than anyone else in society but indeed not only the Brahman but every member of society abnegates himself, ignores himself, allows himself to suffer that others may grow, may prosper and may live. I know that the beauty and the sublimity of that concept is lost upon some of my hon. friends. (*Hear, hear*). I hope and pray that society and mankind will yet be able to rise morally, socially, ethically, spiritually and ideologically where the Brahmana will be the true Brahmana and all members of society will rise to the level of that age ! I am not ignoring the fact that the Brahmana has deteriorated as all others have.....

Shrimati Durgabai: In preaching and practice, both.

Shri R. K. Chaudhari : Why should the lady Member interrupt ?

Pandit Malaviya : My sister there, except that we are born of different parents is like a real sister to me because we have both been born of the same institution. That sister of mine tells me that the Brahmana should rise high and lofty both in precept and practice. I wholeheartedly and with every fibre in me pray with her that it may be so, and indeed that it may be so with all others as well.

Dr. Ambedkar: In the meantime, let us have the Hindu Code.

Pandit Malaviya : If we can rise again to that pure and noble Brahmanic ideal, then the Hindu society will have no more of all its troubles and ills but will once again become the leader of mankind

as it was at one time; not at the time when there was any injustice or tyranny by any section of society over any other but at a time when every member.....

Shrimati Renuka Ray : Remember it.

Pandit Malaviya : Of course I remember it, otherwise how should I say it. But it is Mrs. Renuka Ray who needs to know it and to remember it.

Shrimati Renuka Ray : You are talking about the Hindu society during the days of its decadence. Please remember the *Vedas* and the *Upanishadas*.

Mr. Chairman : May I request the hon. Member to proceed with his argument as he was proceeding before and not to answer these interruptions ? Otherwise the main thread of his theme will be lost. I would request hon. Members not to interrupt the speaker.

Shrimati Durgabai: May I interrupt, Sir ? Is not this Bill intended to bring the example of Rama to all men ? Is not that a subject matter now ?

Mr. Chairman: This is a very clear interrruption.

Sardar B. S. Man : It is very dangerous nowadays to ignore interruptions from hon. lady Members.

Shrimati Durgabai: In the matter of interruption, there is no distinction between lady Members and others.

Pandit Malaviya: In the Brahman society the woman has been given the highest place. There is nothing higher than the mother.

Dr. M. M. Das : One man marrying 250 wives : Is that the dignity conferred on a woman ?

Mr. Chairman: Order, order. Let the hon. Member proceed.

Pandit Maitra: Which man has married 250 wives ?

Dr. M. M. Das : I am referring.....

Mr. Chairman : Order, order. No mutual wrangling ; we must keep the decorum of the House.

Pandit Malaviya: To go back to where I was, I was therefore submitting that if nothing else could be done, we might at least have this measure made applicable to the areas which were previously called the Indian States. Only after that process has been gone through *viz.,* that it has been published and circularised there and the Legislatures concerned have decided that it should apply to them.

There is yet another difficulty which I have. And that is, that when the Hindu Code was first framed, according to the Constitution which

was in force in this country at that time, agricultural property was not a subject on which the Central legislature legislated. As a result, 90 per cent, or probably even more of the landed property in this country did not come under its jurisdiction.

[MR. DEPUTY SPEAKER *in the Chair*]

Now, agricultural property has also been put in the Concurrent List and this legislation, if passed, will apply to landed property also all over the country, The scope of this Bill, therefore, has been expanded almost 900 times over. As it stood before, it would have concerned only a very small fraction of the property in the nation.

Mr. Deputy Speaker : That is no longer the subject matter of this Bill, unless the hon. Member thinks that as a consequence of the marriage, the children will be entitled to that also.

Pandit Malaviya : I am at present talking of the application of the Bill and its import. I was pointing out.....

Mr. Deputy Speaker : The hon. Member evidently was not here. We have said that this Bill is confined to marriage and Divorce. Property, inheritance, succession are not gone into now, unless indirectly the hon. Member says that the consequence of marriage will be some offspring and they may be entitled to some landed property.

Pandit Malaviya : Sir, I have the same difficulty which I had once before. So many speakers are about that I could not hear you !

Mr. Deputy Speaker: The property chapter and other parts are now excluded from the scope of the Bill. We confine ourselves to marriage and divorce alone. Therefore, the hon. Member need not dilate upon that matter now.

Pandit Malaviya: What I was submitting was not with regard to the nature of the provisions in respect of property. What I was submitting and another point which I had tried to make out before you came back was with regard to some of the vary objectionable features and circumstances relating to the situation in which this Bill, is now being put before this House. And I was, therefore, pointing out that a very grave and fundamental change in the circumstances has occurred, namely, that when the Bill was first framed. It did not have any applicability to 90 per cent, of the extent of this land. But it will now have, on account of the adoption in the Constitution of a Concurrent List on which agricultural lands and property have been placed.....

Mr. Deputy Speaker: The Bill is not pressed so far. It is now confined only to the part relating to marriage and divorce. There is enough time for hon. Members to consider when another Bill comes as to how it will affect agricultural land. Today we need not dilate upon that matter. Whatever might have been the change due to the agricultural lands being put in the Concurrent List, we are not concerned with that now.

Pandit Malaviya : Sir, I will obey your ruling or decision. But I wish to submit for your consideration what I have to say and I will do as you will direct me. If at any time any Bill including the clauses relating to agricultural property comes up, then of course, it will be time for us to discuss the details of the clauses of that Bill and to express our opinions upon them. But at this stage, as you have stated, Sir, I am not trying to express any opinion whatever upon the question of the landed property in this country, or the methods of its disposition. I am not speaking on that subject. But what I wish to bring out is about the scope of the bill itself. Whatever may be its provisions, whether it is marriage, whether it is death, or whether it is anything else, it will somehow apply itself to all. I am trying to show with whom the provisions will come into compact. For instance, just before you returned to the Chair, I was arguing that the States in which the Bill had not been published should not be put under this Bill straightway, and there should at least be a provision that only after it has been published in the respective States should the respective legislatures be asked to decide upon it. Similarly, I beg to submit that what I was arguing was not the question of any landed property or any other property as such, but the nature of the applicability, the nature of the thing, what this Bill or any Bill of this nature, can now comprehend as against what it could comprehend before. Therefore, I shall confine myself to that aspect of the matter and not go into the question of property at all.

Mr. Deputy Speaker : The hon. Member has taken two hours and we have some other work also to do. I thought the hon. Member was concluding and I was anxious to call upon the hon. Law Minister to speak. Now, may I know how long the hon. Member is likely to take ? I may adjourn the half-an-hour discussion to some other day, if the hon. Member is likely to finish soon. We have another fifteen minutes left now.

Pandit Malaviya : Some of my hon. friends may laugh, Sir, but it is difficult for me to say how long I will take. I hope you will believe me,. Sir, that I have been trying not to dilate or to be expansive in my arguments. Some hon. friends have said that I was dilating. I can only say that if any one of them would do me the honour of meeting me outside the Chamber and letting me explain to him my view point about any one of the points which I am touching upon here, then he would know how much there is to be said on each one of these points, and how I am trying to confine myself only to the most essential things. Therefore.....

Mr. Deputy Speaker: May I know whether it is possible for the hon. Member to finish in another fifteen minutes ?

Pandit Malaviya : I do not think that will be possible. I may tell you, Sir, that I have got here a heap of notes and books which I have not yet even once touched. I am saying this in all sincerity and I am trying to confine myself to the most essential things. If I wanted to take up each one of the points in great detail, it would be different. I am trying to confine myself to the essentials. Yet I feel so deeply and so strongly on this matter and the subject is so important and vast that I am afraid it will not be possible for me to finish today. But I am in your hands, Sir.

Mr. Deputy Speaker : How long does the hon. Member propose to take ?

Dr. Ambedkar : Five days.

Pandit Malaviya : The Law Minister says five days : I would not mind five days.

Shri Sondhi (Punjab) **:** The challenge is accepted.

Shrimati Durgabai: May I suggest to my brother Member that his thesis may be printed and circulated and taken as read ?

Hon. Members : No. no.

Pandit Malaviya : When my hon. sister makes the Constitution of this country and also the rules of Parliament, then probably we shall have that procedure.

Sardar B. S. Man : That day is not far off.

Pandit Malaviya : I would not unnecessarily take too much time but I would not be able to finish today.

Mr. Deputy Speaker : Let me know how long he will take from now.

Dr. Ambedkar: If not five days five hours.

Pandit Malaviya : I have lots to say, I shall be entirely guided by you. If you will permit me I will leave the matter open to you. I am prepared to come to you and show you my material and leave it to you as the custodian of the privileges of all Members of the House to tell me how much time I should take.

Mr. Deputy Speaker : It is not my intention to curb or curtail the discussion on any point. Two hours have already been taken by the hon. Member and already we have discussed for six days. So far as the books and other references that the hon. Member has mentioned, they are for detailed consideration and he will not lose his opportunity. There are the other clauses on which he may bring to bear his knowledge of those tracts which he has. So far as the present occasion is concerned half an hour more should be sufficient to the hon. Member.

Pandit Malaviya : I fear that may not suffice. If you will permit me I will put it in another way; I shall try to be as brief as possible. If you would rather that I cut short as much as possible I will devote myself to two points, namely marriage and divorce tomorrow and finish as quickly as I can. It may be that I will need. . . .

Dr. Ambedkar : Five hours.

Pandit Malaviya : He has come down to five hours from five days. Do you think, Sir, that is unreasonable? I shall try to make it as much less as possible. I am not saying this lightly. I will earnestly endeavour to make it as short as possible, perhaps two to two and a half hours.

Shrimati Renuka Ray : I want to ask a question, Sir. This clause 2 deals with applicability. I want to ask you again whether we can bring up the whole subject of marriage and divorce when the consideration stage is over.

Mr. Deputy Speaker: The hon. Member wants my ruling again and again. I wish only to say, is it necessary at the end of the discussion to give a ruling? Anyhow this much is clear. The hon. Member will try to conclude as early as possible tomorrow. So far as this matter is concerned and after he concludes I will immediately take up the half-hour discussion now and we shall go on till 1-30. I thought the hon. Member, Pandit Malaviya might conclude if we sat for another half an hour today, but there does not appear to be any chance of that. Therefore, if he will take some more time tomorrow, immediately after him I propose calling the Hon. Law Minister.

Shri B. Das (Orissa)**:** Sir, the reformists are keeping very quiet on the floor of this House. Two violent though very outstanding speeches have been made by my friends, Sardar Man and Pandit Malaviya. Therefore, you will permit us who are the majority in this House to have a say, apart from what Dr. Ambedkar will have to say in his final reply on behalf of Government.

Hon. Members : Yes, Sir.

Shri Syamnandan Sahaya : Yes, Sir, the father of the House should be given a chance.

Shri Shiv Charan Lal (Uttar Pradesh)**:** Sir, we have amendments on which we want to speak.

Khwaja Inait Ullah (Bihar)**:** Sir, so many amendments have been moved regarding this clause so as to bring within the scope all Indians, and so much has been said on that point. Therefore, I wish to throw some light on the Muslim point of view, as to whether they can accept it or not. So I must have some time.

Shri R. K. Chaudhuri: May I respectfully point out that yesterday when I raised this question of opposition to an amendment, you were pleased to say that such opposition would be allowed. And I particularly laid stress on the amendment by which the Hon. Dr. Ambedkar wants to introduce "tribe", which is a very important matter. I want to speak on that—I am not going to speak on other subjects.

Mr. Deputy Speaker : Merely because an hon. Member tables an amendment he is not entitled to speak. I am allowing all elucidation on points to those who have tabled amendments, but when similar amendments have been tabled and one or two hon. Members have spoken, on account of the time which is already taken, if some hon. Members who have tabled amendments are not able to speak, I do not think I need wait so far as this matter is concerned. We are having a second reading on this clause 2. As regards the request of my hon. friend, Khwaja Inait Ullah, I am seriously considering whether that amendment which wants to apply this Bill to Muslims and Christians is not enlarging the scope of the Bill. I do not think any further discussion on this matter is necessary. Anyhow, I am going to call the hon. Minister immediately after Pandit Malaviya.

Shri R. K. Chaudhuri: I wanted to oppose Dr. Ambedkar's amendment relating to the introduction of the word "tribe".

Shri J. R. Kapoor : With regard to what has fallen from you, Sir, about the admissibility of the amendment seeking to enlarge the applicability, may I submit that even at an earlier stage this point was taken up and then we were assured by the hon. Speaker that before any ruling was given on that point we would be given an opportunity to have our say on the matter. It might be the Chair's first impression that it may not perhaps be within the scope, but you will please permit us to have a say to convince you how easily it comes within the scope. If that be your ruling I may submit many of the amendments of my hon. friend, Dr. Ambedkar would also have to be declared out of scope.

Mr. Deputy Speaker : Dr. Ambedkar himself to be ruled out of this House?

Shri J. R. Kapoor : Not he, some of his amendments; because they are very much on the same lines as this amendment.

Mr. Deputy Speaker : One wrong amendment does not make another amendment good. If any of the hon. Law Minister's amendments also enlarges the scope it is out of order—we will consider that matter.

Pandit Malaviya : I have another amendment of which I have given notice—a short amendment which I shall move tomorrow at the end of my speech.

Mr. Deputy Speaker: Provided, it is an absolutely formal amendment.

Pandit Malaviya : I gave notice of it day before yesterday.

Khwaja Inait Ullah: I will not take more than a few minutes.

Mr. Deputy Speaker: No, Sir.

Shri R. K. Chaudhuri: What about my point, Sir?

Mr. Deputy Speaker : The hon. Member has got the 'Ayes' lobby and the 'Noes' lobby. He can vote against the clause if he likes.

It is now too late for us to embark upon the half-an-hour discussion. It will be taken up on some other day.

The House then adjourned till Half Past Eight of the Clock on Thursday, the 20th September, 1951.

* HINDU CODE—*contd.*

Shri Amolakh Chand (Uttar Pradesh)**:** May I draw your attention Sir, before Pandit Malaviya resumes his speech, about a cartoon which appeared in today's *Indian News Chronicle,* about which I have sent a note to you ? May I know whether that will be taken up just now or on some other date ?

Hon. Members : What is the subject matter of the cartoon ?

Shri Amolakh Chand : May I, with the permission of the Chair, just satisfy the curiosity of hon. Members about this cartoon ?

Mr. Deputy Speaker: I have received this cartoon published in the *Indian News Chronicle*. I think it shows my likeness. It is a cartoon of a clock where both the hands are being held up by some of the hon. Members who have spoken against this Bill, but underneath the very pendulum is said to be held intact, not moving forward or backward, by a representation of myself. So long as the speaker is here that is another matter. But casting aspersions on the Chair is not only unjustified and undignified but here it is also opposed to the facts. I do not know if any hon. Member will ever raise any point that whatever might be my differences I have done anything unjust in this House.

Hon. Members: No, no.

Mr. Deputy Speaker: Therefore, I will look into this matter. It is a very serious matter—it does not matter whosoever may be in the Chair—to cast aspersions on the Chair. The moment the House feels that the person who occupies the Chair for the time being is not doing justice, it knows what to do, so far as that person is concerned. But it is not for outsiders to caricature, and it is an aspersion on the whole House. I shall look into this matter leisurely and then find out what action should be taken. However, I do not want this to interrupt the progress of this Bill.

Shri T. N. Singh (Uttar Pradesh)**:** At the same time, whatever the action about that particular cartoon be, we do feel that the Press should not come out with anything which casts aspersions on the Chair of this august House, and it should be prevented. I feel that the matter, since it has been raised, is rather important and it should not be postponed in this fashion, I would urge that once the matter has been raised, we should certainly take it up right now and the House should express its disapproval.

* P.D., Vol. XV, Part II, 20th September 1951, pp. 2901-19

Mr. Deputy Speaker: I shall take time to consider it.

***Pandit Malaviya** (Uttar Pradesh)**:** When I left off yesterday, you were good enough to ask me how much more time I would need. I respectfully expressed my inability to indicate any exact amount of time and requested you to let me proceed on the basis that I should try to take as little time as may be possible. You were good enough to more or less indicate a limit, that I should not take more than about $2^1/_2$ hours more.

Shri Sidhva (Madhya Pradesh)**:** You said half an hour, Sir.

Pandit Malaviya: I have since heard.....

Mr. Deputy Speaker : I can only make one observation. The hon. Member yesterday was encouraged to ask for five days on the suggestion humorously made by the Hon. Law Minister.

The Minister of Law (Dr. Ambedkar): He wanted five days— I suggested five hours.

Mr. Deputy Speaker: When I was asking how long the hon. Member was likely to take, the Hon. Law Minister humorously said, five days. I was suggesting half an hour, the hon. Member was wanting more. Now what I propose doing is this.....

Pandit Malaviya: May I say.....

Mr. Deputy Speaker: I will do sufficient justice to the hon. Member. Now how long, may I know, is the Hon. Law Minister likely to take to reply ?

Dr. Ambedkar : It is my intention to be brief, but I would like to cover some of the points raised, and I feel an hour or an hour and a quarter might be more than enough for me.

Mr. Deputy Speaker: I propose calling the Hon. Law Minister as soon as the hon. Member who is on his legs finishes. Even if he takes $2^1/_2$ hours, there will be sufficient time if I call the Hon. Law Minister at 12 o'clock.

Shrimati Durgabai (Madras)**:** The hon. Member who is on his legs after having mentioned five hours or five minutes or whatever it may be, said that he would submit himself to the ruling of the Chair and you very kindly said that he should not require more than half an hour. After having once submitted to the ruling of the Chair, would the hon. Member be now permitted to retract ?

*P.D., Vol. XV, Part II, 20th September 1951, pp. 2902-18.

Mr. Deputy Speaker: I leave it to hon. Members themselves.

Pandit Malaviya : I said about another matter yesterday that when my sister makes the rules, we will have to submit to many things from which fortunately we are free at the moment.

Shrimati Durgabai: This is already in the rules.

Pandit Malaviya: What I was intending to say was.....

Mr. Deputy Speaker: Under the rules, so far as Finance Bills are concerned, I can set a limit. With respect to other Bills there is no provision for setting a time-limit on speeches.

Shrimati Durgabai: My point is that once the Chair has given its ruling.....

Mr. Deputy Speaker : Not ruling.

Shrimati Durgabai: .....would the hon. Member be permitted to go against that ruling ?

Mr. Deputy Speaker: It is not to be interpreted to be a ruling. It is only a suggestion.

Incidentally, I forgot that I will have to put the amendments to the vote of the House. Therefore, if the hon. Member would restrict himself to two hours, thus making half an hour available for the Chair, I shall call upon the Hon. Law Minister at 11-30 so that we may finish this clause and all the amendments on it before we rise for the day. The hon. Member may take two hours.

Pandit Malaviya : I am very grateful to you, Sir, for what you have said, but what I was going to say in the beginning was that whatever might have been the arrangement that we had more or less thought we had arrived at.....

Mr. Deputy Speaker: He need not labour that point.

Pandit Malaviya: .....since then some esteemed friends, for whose views and opinions most of us in this House have respect and regard, have taken the view that Members of the House should take as little time as possible. As I came into the House just now, it was conveyed to me that I should finish within a matter of minutes. I know that according to the rules one should have the time which he wishes to have and it is very good of you to say that you will stick to that. It is also true that I feel very earnestly that in a matter of such vital importance where things which have come down from millennia are going to be demolished, minutes and hours should not be counted and if somebody has something to say on this issue which

is obviously not utter nonsense and irrelevance, then the question of time should not arise, whether he takes one day or two days or twenty days. But I respect the wishes of elders and of our leader and what I wished to say to you was that even though you have been good enough according to the rules to give me the longer opportunity. I shall try to leave out almost all that I had to say and shall try to confine myself to a few minutes only. I say this with a deep sense of pain and injustice to me and to this cause, but I am a man, as I said, who believes in the Hindu methods of tolerance and even if an unreasonable thing is thrust on me.....

Mr. Deputy Speaker: The hon. Member will kindly resume his seat. I have been trying to avoid any impression being created that we are either hustling the Bill or unnecessarily dragging it on. I am bound to see to it that neither the one impression nor the other impression is created. We have spent sufficient time over this matter and just when we are concluding the debate and when, if a closure motion is moved. I am prepared to accept it because I am satisfied that there has been sufficient discussion on this matter and although individual Members might not have spoken, collectively all of them have spoken on all the points arising—just at this time, if the hon. Member feels aggrieved and then makes a point that for want of time and on account of some kind of limitation and pressure he is not putting forth all his points, he would not be doing justice to any of the persons here. I would like to avoid an impression being created that we are hustling this measure. It may be that there may not be sufficient support for the one or the other opinion. After all, we have to go by the rule of the majority in this House and it is open to all persons to express and press their point of view, but let it not be said that we are hustling the measure. The hon. Member has taken two hours. If he wants, he may have two more hours and if for any reason he is not prepared to proceed further, he need not make a point out of it, lest it should create an impression that we are hustling through this matter, though really we have been going on leisurely with it. Therefore, that kind of impression ought not to be created. It is open to him to speak or not to speak for various other reasons, which are extraneous. I am only concerned with the procedure in this House and the right impression both in this House and outside that we are not hustling such an important matter as this nor are we unnecessarily trying to stretch the discussion by any kind of filibustering. Therefore,

in between these two impressions, I am trying to carry through this bill. The hon. Member need not refer to all those matters. It is his sweet will and pleasure to say what he wants to say or to refer to the further clauses or not to refer to any of them at all, or to make any comments for various reasons which he may consider fit and proper.

Pandit Malaviya : I entirely agree with the remarks that have fallen from your lips and I was not making a complaint. I was only mentioning the fact that for reasons other than those that you have stated I shall not allow myself to take all the time that I need and that I should have liked to take. That is all that I wished to submit. Incidentally, it will also probably enable several other Members of this House, who, I saw yesterday, were very keen to have an opportunity to say something, to have an opportunity to do so. I am not saying this by way of any complaint, but I was submitting to you as a matter of fact that I have to leave out practically all that I wished to say and must now come straight to one or two points.

I will leave the point I was making when we dispersed yesterday, regarding the scope of the Bill having been extended, so to say, overnight by the new Constitution having included agricultural lands in the Current List. I shall leave that also there.

I will only touch in passing on another very important aspect, namely, that the bill which is before us now is so largely changed that it is almost unrecognisable compared to what it was when it was first introduced. There is a rule that Select Committees at the end of their reports should state that they have amended the Bill only in such measure, as they think, has not changed it materially and that the amended Bill does not need re-circulation or re-publication. That proves the principle that if a Bill is substantially changed in a Select Committee it should be republished and re-circulated. I submit that in matters of legislation we should observe the sanctity of the rules, because rules are framed in moments of calm and dispassionate consideration ; not *vis-a-vis* any particular item or any particular point of view, but with regard to the basic fundamental needs of ensuring that legislation is passed only with due care, thought and circumspection. Such rules, therefore, have very great value and it must be an ill day for the growth of healthy parliamentary traditions and institutions in any country if we begin to make light of them to suit the conveniences of our opinions on particular issues and particular

occasions. I, therefore, feel, now that the Bill is so entirely changed to as it is, that constitutionally there can be no justification at all for proceeding with it, or any part of it now as it stands without that procedure being brought into force. I will leave that point also there.

I will touch only upon one or two things more and will resume my seat. Several friends who are supporters of this Bill said that this Bill has been drawn up in accordance with the tenets of the *Smritis* and *Dharma Shastras*. If I had the time I would have quoted extracts from the various *Smritis* and *Dharma Shastras* to prove the hollowness of that claim. I cannot do that now. I will, therefore, come straight to the two vital principles which are involved in the measure that is to be taken up—one the question of the degree of *sapinda* prohibition and second the question as to whether among the Hindus a remarriage of and married woman can take place.

Texts have been quoted form some of the *Smritis* on both these points. With regard to the *sapinda* question it has been argued that the *Smritis* have from time to time laid down different principles, that while one *Smriti* has said one thing another *Smriti* has said another thing and an attempt has been made to draw the inference therefrom that it was a matter not of such vital importance that it could not change, but that from time to time, reflecting the opinion and the practice of the age, the different *Smritis* have laid down different texts. 1 was mentioning yesterday that in the matter of these *Dharma Shastras* there are rules of interpretation which have laid down cut and clear principles and methods of approach. It is laid down that the *Dharma Shastra* can be interpreted only by the utilisation of the rules of *Mimamsa*. Fourteen sources for determining them have to be utilized. They are all mentioned and therefore if anybody wants honestly to understand these things he must go into the depth of that matter.

Almost every one of the *Smritis* and the *Dharma Shastras* have laid down that in the *sapinda* degree of prohibition we should have seven degrees on the paternal side and five degrees on the maternal side or more. Nobody has disputed that. It has been said that it is stated only in some of the *Smritis* as five and three instead of seven and five. I believe the *Paithinasi Smriti* text is relied upon for this purpose. In the belief that Members of this House wish seriously to take the matter into consideration as to whether it is laid down in the *Smriti* that it should be five and three, I shall try to clear up that point. The *Paithinasi Smriti*.....

Mr. Deputy Speaker: I do not think the Hon. Law Minister is dogmatic about this matter.

Dr. Ambedkar: When the time comes we shall consider it. ...

Pandit Malaviya : I am taking this only as an instance to show how the entire provisions of the Bill are based upon a complete misconception. The text in the *Paithinasi Smriti* is :

पंचमीं मातृतः परिहरेत् सप्तमीं पितृतः

So far it is clear—five degrees from the mother and seven degrees from the father. So, the *Paithinasi Smriti also says the same so far. Then, it goes on to say:*

त्रीन् मातृतः पंचपितृतो वा ।

It gives another view and says three from the mother's side and five from the father's side. If I had the time I would have gone into all the other *Smritis* to disprove the statement of some friends that the *Smritis* lay down different rules—in one case seven and five and in another case five and three and it is for us to select.

The *Mimamsa* lays down the method of interpretation of these texts. The whole basis of Hindu law rests upon the fact that the law comes for the *Shruti. Shrutis* are *Swatah Pramana* (स्वतः प्रमाणः). Whatever is in the *Shruti* stands proved by itself and does not need any further argument. The *Smritis* are *Partah Parmana* परतः प्रमाणः They do not by themselves carry that authority because they are *Shrutimula.* श्रुति मूल. They belong to the class where authority is derived from *Shrutis.* Now, it is obvious then that if the same source is to be drawn upon by all the *Smritis* the obvious objection would be—and I suppose it would be a natural objection also— that if you claim that they all emanate from one and the same source, then how can there be conflicting versions in them. We can anticipate that objection.

Mimamsa goes on to say that there may be cases where in the *Shruti* itself there is *auvikalp,* that is, where the *Shruti* itself lays down two alternatives that a thing may be of one or another.

There are instances of that nature in the *Shrutis* themselves !

[10 A.M.]

उदिते जुहोति। अनुदिते जुहोति।

That is from the *Smritis.* It says a certain *Yajnya* may be performed before sunrise, and it also says it may be performed after sunrise. But there is no conflict, because both are mentioned in the *Shruti.* And then according to the tenets of the *Mimamsa Shastra* other

considerations come into play. Technically it is called *Atma tushti,* and according to the principle of *Atma tushti* each one has to decide— not for the pleasure of it; *Atma tushti* does not mean pleasure, it does not mean one's whim of taking one thing today and taking another thing tomorrow, taking rice today and taking *chapati* tomorrow. But *atma tushti* has a fundamental religious place. According to *Atma tushti* the *Dharma* has to be selected, and once it is selected it remains permanently there, for all time. But that is so only when both the things are mentioned in the *Shruti.* The *vikalp* comes only when both the things are thus mentioned in the *Shruti.* For instance you find :

अतिरात्रे षोड़शिनं गृह्णाति। नातिरात्रे षोड़शिनं गृह्णति।

(Late at night takes one of sixteen, takes not late at night.)

Two directly conflicting things in the *Shruti.* But both being there, the *vikalp* is possible. If the *Smritis* say two different things, then if we found that there is mention of the two things in the *Shrutis,* the *vikalp* would be possible, and the claim which has been made by my Hon. Friend the Law Minister and others that these provisions are based upon what the *Shrutis* say, would become correct. But the available *Shrutis* are silent on the point. There is no direction about the matter. The question then arises, how then do the *Smritis* contain different rules if they have derived them from the *Shruti* sources ?

Mr. Deputy Speaker : I understand the Bill to go according to the *Shrutis* if possible and without the *Smritis* if necessary. That is what, I think, the Law Minister has in view. Therefore, notwithstanding the doubt as to whether it is three and five according to strict rules of interpretation—and they have to be made consistent; I do not think he disputes the proposition that everywhere they are trying to make it consistent so as to avoid any inconsistency—he chooses the latter view. Even if it is not borne out by the strict rules of interpretation he says that it is the correct one and should be adopted, subject of course to the approval of the House. I think that is the view of the Law Minister.

Dr. Ambedkar : Yes.

Mr. Deputy Speaker : Therefore, there is no good labouring the point as to what the interpretation is.

Pandit Malaviya : As I said, I am not doing this necessarily to go into the interpretation of this thing. I am taking this as an example to show the approach to the matter. What I wish to say is that according to the *Mimamsa Shastra* the two texts, one saying that it should be

five and seven and the second saying that it may be three and five, must be reconciled and an interpretation—an infallible, unquestionable interpretation must be there. An interpretation has to be found which is unquestionable and incontroverible. Otherwise the *Smriti* does not remain a *Smriti*. *Paithinisi* is among the *Smritis*. If we will only look for it we will find that we have in the *Smriti Sangrah,* we have in the *Nibandhakaras* a clear interpretation of this difference which lays down, and not only lays down but proves—it will take me time if I went into it, therefore I will not—but it is proved that this provision in the *Paithinisi* is not applicable to all people, it is not applicable to the *aurasa* and the others. In their case the seven and the five apply, and this variant of five and three can only apply to *Dattaka putras* or to *Sapatni matas*. That is how the *Mimamsa Shastra* reconciles these two.

I took this instance to show that there is a clear way of interpreting the *Shastras*. If we want to go according to the *Shastras* we must go accordingly and we will find no sanction for deviating from the seven and the five degrees of *Sapinda* prohibition for marriage.

Similarly, I will take another question. A member read out with a certain amount of righteous satisfaction and vehemence that in the *Smritis* themselves we have provisions for the marriage of once-married women. The well-known *Narada Smriti* and *Parashara* text was read out by an hon. friend of mine—here he is—and he said that the *Smritis* themselves have said that a woman may be married a second time. I can see some friends feeling satisfied about it. This is a tragic matter, for this reason that the meaning of that *sloka* becomes perverted if it is interpreted to mean that it relates to a married couple. I hope Members will not think that I am talking in the air. (*An Hon. Member : No, no*). The line is very simple:

नष्टे मृते प्रव्रजिने, क्लीबे च पतिते पतौ।

पञ्चस्वापत्सु नारीणां, पतिरन्यो विधीयते।

It is allowed at disappearance, demise, reclusion, impotency and sinfulness of the husband.

As it looks it is very simple. In the case of these and these and these 'husbands', these friends think, another husband is provided. But I wish Members of the House kindly to devote their mind to this. The simple rules of *Vyakarana* come into this question.

An hon. friend says *Vyakarna Padhao* and one may feel tempted to play the pedagogue to so distinguished a class, but I shall resist

the temptation and I will only briefly explain the matter because it is a point upon which the whole edifice of the Hindu Code rests. It is that one sentence upon which everyone seems to be taking his stand. It is a very simple matter. According to the rules of grammar *Eka Vachana* in *Saptami* of *Pati is Patyau*. That is formed according to definite *Sutras*. I do not know if you will let me go into details to show how the words *Patyau* and *Patau* are each formed. I am quite sure it will be interesting, but it will take time. But every thing will become clear if we understand that.

Mr. Deputy Speaker: What will happen to *Hari* ? It is a masculine ?

Pandit Malaviya: I see, Sir, you are interested and if you will permit me...

Mr. Deputy Speaker : Then *Hari is Ikaranta Pullingam* and *Saptami* is *Harau* and *Pati* should be *patau*. That is my difficulty. I do not know if it is different.

Pandit Malaviya : Sir, your question is quite valid. That is it. From *Hari* it is *Harau*. So from *Pati,* it should be *Patau*. But we all know it is *Patyau*. Why ? The difference is in this way. When it is *Saptami Ek Vachan Gni* comes in. Then the *Sutra Patih Samasa Eva* comes into play and the *Ghi Sangya* gets ruled out and another *Sutra aut,* comes into play and it becomes *pati* plus *au*. Then by the *Sutra Ikoyanachi* the '*i*' gets transformed into *ya* and *Patyau* is formed. That is in the case of the ordinary meaning of the word *Pati,* that is husband. The rule is quite clearly laid down *Patih Samasa Eva*. Now, Sir, the question arises why instead of *Patyau* the word *Patau* has been used. It is such an obvious thing that even a blind man can see, that there is some difference, there is some purpose. The Hon. Law Minister will bear me out that the normal form (*rup*) of *Pati* in *Saptami* is *Patyau*. But in this text *Patau* is used. (*Interruption*) An hon. Member says that he is extremely doubtful. I do not claim for myself his wisdom in this. But, *Panini's Ashta Dhyayi* is there and if any hon. Member can point out anything to the contrary. I will do whatever he will say.

Shri Amolakh Chand : Will the hon. Member quote the *shloka* also?

Pandit Malaviya : I am coming to that. Therefore, the word used is different from the normal word *Patyau*. Here the word is *Patau*. Now according to the rules of Sanskrit grammer...

Mr. Deputy Speaker : It is not necessary. The hon. Member means that it is incorrect.

Pandit Malaviya : No, no. It is not incorrect. What I was going to point out was that in this case the word *Pati* is used not in the sense of *Pati* meaning husband but according to the rules of grammar— I am not saying it on my own but according to the rules of grammar पतौ can only be used where the *Achararthe* sense comes in. Then, not being in the sense of पति *i.e.* husband, the *sutra* 'पतिः समास एव' which applies normally and results in पत्यौ does not apply and 'Ghi' *Sangya* ('घि संज्ञा') takes place etc. and when 'Ghi' *Sangya* (घि संज्ञा) comes in then the *sutra Accha Gheh* (अच्च घेः।) applies and the word *Pati* plus *'i'* becomes *Pata* plus *'Au';* and by the rule *Vriddhi* it becomes *Patau* (पतौ). It is a recognized word in the Sanskrit Grammar of *Panini*; it is not mistake that it has been used here in that form ; it is not by thoughtlessness that it has come in. But the word *Patau* (पतौ) instead of *Patyau* पत्यौ has a meaning and the meaning of that word पतौ is one who is going to be a *Pati* and not one who is a *Pati.* That is the meaning of that word. Let anybody challenge what I am stating. For thousands of years that grammar has been there and nobody has questioned it; the word *Patau* means not a husband but who is on the point of becoming a husband. This correct meaning of this *shloka* completely changes...

Prof. K. T. Shah (Bihar)**:** *Anayu* comes in there.

Mr. Deputy Speaker : *Patranyo Vidheeyate* comes in. It must have been a husband.

Pandit Malaviya : I am coming to that. I am very glad you raised that question. In the *Prathama* there are only one set of *sutras* but in *Saptami* there are these two sets of *sutras* mentioned by me, one forming *patyau* and another forming *Patau* and secondly the difference had to be shown at the first place only, to clearly indicate that only where there had been a talk of marriage but no marriage in fact, that this question arose, while in the second place, it is a husband who is to be indicated. It is not merely a candidate for husbandship which has to be provided. Therefore, the second *Patiranyo Vidheeyate* is perfectly correct.

Mr. Deputy Speaker: *Anyo* must mean what preceded also.

Pandit Malaviya : *Anyo is* again *Prathama.*

Mr. Deputy Speaker : *Prathamanyah* also must be the husband.

Pandit Malaviya: If it had been both the same then in the first place it would have *Patyau.*

Mr. Deputy Speaker : Whatever is intended by the provisions one must correspond with the other one.

Pandit Malaviya : How can it, Sir, when the very purpose is different. The beauty of Sanskrit language is that it expresses in a word what it takes a sentence to say in another language. That is the beauty of Sanskrit language. If a sentence says "If mango is not available, then guavas may be taken" we cannot say that mango and guava must be one and the same.

Mr. Deputy Speaker : There cannot be a comparison between two absolutely uncorrelated matters. If *Anyo* is used that word or the other must relate to the same category. If in the one case it is not marriage, in the other case also it is not marriage. If it is marriage in one case, it is marriage in another case. Both of them are understood to be the marriage of the husband.

Pandit Malaviya : We cannot change the meaning of words .....

Shri B. K. P. Sinha (Bihar)**:** On a point of order, Sir, I find that all these discussions are academic. The words *Pati* and *Patyau* are used in this *shloka* and not *Patau.*

Pandit Malaviya: That must be a wrong print. I am not saying it lightheartedly. The original test is *Patau.* The very chauda .....

Mr. Deputy Speaker : *Patite Patyau* must be wrong because it should be *guru.* The prosody will come in the way of this *Pati and Patau* are different. Apparently it is wrong.

Pandit Malaviya: It is obvious that it cannot be *Patyau.* What I wished to submit was that this rock upon which that edifice stands does not exist at all and the meaning of the word used is not husband ; it is not *Patyau* but it is only one who is on the point of becoming a husband, *Patau.* There is thus nothing in the *Shastras* to suggest that a married Hindu woman could marry again.

I do not want to take much time of the House. I had many things to say. But, in view of what I referred to, I do not wish to go against the wishes of those whose wishes and words are law for us. I, therefore, do not wish to take much more time, much though I would have liked to say many things. By these two examples I have tried to show how completely fallacious are the grounds on which the Hindu Code is proceeding.

I will conclude by mentioning one thing more. In Hindu society from time immemorial, laws have prevailed without the authority of

the State, without the authority of the police, without the authority of any legislature as such. There has been no governmental sanction behind the laws which have been in force. The laws were promulgated by men who had attained to perfection as nearly as man could, who were held in universal respect, who worked for the good of the people. And there was the sanction of what has been called in the *Shastras, Apoorva,* the unseen, that which will happen under certain circumstances ; the thought that what one was doing today would have effect later on ; that the human soul, the *jeeva* does not lead one life alone, but goes through a chain of births; that the actions of one life are inter-related to the actions and results of previous and future lives ; that deeds of virtue and piety and righteousness bring a reward which is greater in reality than any reward of comfort or convenience which one may have in this life. A clear conception of the real value of things as distinguished from the ephemeral aspect, was always kept in mind, it is under the force of that sanction and that belief that the laws which were promulgated have always been followed. In the whole of this country, throughout its length and breadth, the law of the Hindus has been observed not because any one—for instance my esteemed friend Kaka Saheb Gadgil who is coming into the House and who talked on this Code, not like the elderly responsible man that we know him to be, but like a gay youngster who just utters what comes at that moment in the mouth, or any one else—found them to be comfortable or otherwise, found them to be pleasant or irksome, but because both Kaka Saheb and Govind Malaviya and the other 300 millions like them have been steeped in the conviction and belief that what they are doing today will have repercussions hereafter, that what they go through now will bring its own reward. They have been all bred up to believe that it is not *Preya* alone which matters in life, but that it is the *Shreya* of things which must be assiduously inculcated. That has been the shape of things in this country and in this society. Let not the Government make a thoughtless and hasty mistake in demolishing that fabric upon which the respect for and the adherence to the law has prevailed. If one set of legislators, one set of wise men or wiseacres today legislate in one particular manner as they think fit, people will have ceased to worry about *Apoorva*. People will know that it is possible for them the next day to get a law made to suit their pleasure and their convenience. The moral fabric will disappear and man might go back to the old age where there

was no method or system of marriages, where a state of things prevailed which probably, in decent society, would not be considered worth mentioning. That is the stake which is involved.

I should have liked to have dealt with the question of divorce ; I should have, liked to have dealt with the question of widow remarriage; I should have liked to have dealt with the question of inter-caste marriage; I should have liked to have dealt with the question of monogamy. I hope I will have opportunities as these clauses come up to deal with each one of these at the appropriate time. It is not for reasons of orthodoxy alone that this question must be considered. It is from the point of view of the over all interest and well-being of society that we should tackle these problems. I said society. Society means the whole group of people, all the inhabitants taken together. It is formed of the units, of the individuals. But, the unit and the whole, even though they are inseparably interdependent, have their own separate entity also. The body is made up of all the limbs. But, the hand has its own existence by itself; the head has its own. The body as a whole cannot be by itself without the hands, feet, legs and the head.

[Shrimati Durgabai *in the Chair*]

But, the body is not merely the hand or the feet or the head. It is the sum total of the whole. When, therefore, we have to think of society, we have to think of the good and interest of society as a whole and if any thing is in the interest and well-being of all, then, whether it is pleasant or whether it is a little less pleasant for one individual here or one individual there, that must be adopted. When these topics come up, I hope I shall have opportunities to deal with them. I wished to say a great deal to bring out in clear perspective the issues involved, the fallacy or correctness of the approach made, and the conclusion to which we must irresistibly be driven. And right now, Madam, I should have had another advantage, that one esteemed Member of this House, in the very nature of things, being in the Chair, is now bound to be as fair to me as anybody else. But I said that I shall not take more time, and shall respect the wishes and the decisions of the esteemed Leader of this House. I will therefore close my speech, and close it with the earnest appeal that a matter of this seriousness, affecting the life of 300 million human beings should be considered as carefully and in as great a detail as may be humanly possible. There is only one formal thing which I must do now and that is to move

the amendments of which I had given notice three days ago. I beg to move :

(i) In part (a) of sub-clause (1) of clause 2, after "including" insert "Buddhists, Jains, Sikhs".

(ii) Omit part (b) of sub-clause (1) of clause 2.

After the first amendment, the clause will read as follows :

> "to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Buddhists, Jains, Sikhs, Virashaivas or Lingayats and member of the Brahmo, the Prarthana etc. etc."

I have moved this amendment for a simple reason. I hope and pray that I am a devout Hindu—I do not know if I can make that claim— and

Dr. Ambedkar: After such a speech who else can make that claim ?

Pandit Malaviya : And in the *Sankalpa* which we perform on all occasions, we say *Bauddhavatare*. If only I had the time, I would have tried to show that Buddhism, Jainism, Sikhism etc., while they have their own independent place and position, cannot, by any stretch of imagination, be treated as outside the pale of Hinduism. That does not mean that Hinduism lays any claim upon them or wishes in any way to restrict their complete independence and separate existence. It is not that. I am talking of the historical relation. They have all sprung out of it and have always formed part of it. Even in their religious books and procedure, even in their daily practices and daily life, there are any number of points of identical similarity which still persist. In this land there should be no need, therefore, to show them separately. My amendment does not make any difference in the result. The clause instead of coming as a separate clause comes within the previous one.

I have now only to make an appeal to the Members of this House to view this matter dispassionately. As I said, I do not deny that there are some people who feel that it will be good for society if such a law is enacted. My appeal to them is to proceed in the right manner about it. Sometime ago there was the Inter-caste Marriage Act which was passed, making inter-caste marriages among Arya Samajists valid. At that very time Dr. Bhagwan Dasji, that great learned scholar and devotee of Manu, brought before the then Central Assembly, a Bill

for the application of that clause to the whole body of Hindus. That Bill was not proceeded with, and after long and careful discussion it was dropped. Inter-caste marriages among Arya Samajists had gone on for some decades and they had carried on their movement for a long time and when the same had become common and the time came the measure was adopted. Let us take a leaf out of that book. If social reforms have to be made, nobody can object to them, if all those who are concerned should desire to have them. Let us, therefore, adopt that course, if for nothing else, so that what you do may not remain a mere dead letter on paper without any effect whatsoever.

It has also been pointed out that because now we are only taking up the parts of the Code relating to marriage and divorce, we should consider the feasibility of making an All-India All-Community Code towards that end. I am not one of those whose argument is that if monogamy is good and is to be enforced for the Hindus, it should necessarily apply to everybody. I do not say that at all. If monogamy is good, then I want it for the Hindus whether it is applied to anybody else or not. I do not want to argue that if the rule of monogamy is good for the Hindus it should not come to them unless it comes for everybody else. That is for the others to decide and if they do not want it, let them not have it but if it is good for the Hindus let it come to them. (*An hon. Member:* Is it good ?) It is good and I think it is the only good thing ; but that, however, does not mean that we should become blind to the requirements of a good thing in itself or that we should not take other relevant facts and aspects into consideration. So far as the principle of monogamy goes I have no objection to it, Nobody can have any objection to it, and I should be unhappy if anything except monogamy is found in practice anywhere...

Giani G. S. Musafir (Punjab) **:** There is no harm in asking for all a thing which is good in itself.

Pandit Malaviya : I do not say that it should not apply to every body ; it is for the Government and for the others to think about the others. They have now brought forward a restricted measure dealing with only marriage and divorce and if they think that it is right to apply it to the whole country, let them do it. That is another consideration which the Government should certainly take into account.

Shri Bhatt (Bombay) **:** But can we Members not ask the Government that we wish it should be made applicable to all ?

Pandit Malaviya: Certainly. Many people have said it.

Giani G. S. Musaflr: I think it is our duty to ask for it.

Pandit Malaviya: It is an important point which, I hope, the Government will consider.

Mr. Chairman : May I ask the hon. Member if he does not consider it desirable that we should practise it before we preach to the others and would we not then have a better or stronger case ?

Pandit Malaviya: Madam, I do not want to be so impertinent as to argue with the Chair. I will only close now by repeating my appeal that Members of this House will rise to the requirements of the position of responsibility which they occupy and will deal with this measure with that sense of gravity which it deserves, so that the immemorial and hoary traditions and foundations of the life of the Hindu community may not be tampered with or destroyed in a lighthearted or profane manner.

Shri Jajoo (Madhya Bharat)**:** Madam, the question be now put. (*Interruptions*).

Babu Ramnarayan Singh (Bihar)**:** I want to speak, Madam.

Mr. Chairman : I am not deciding the issue myself. I will leave it to the House. May I know what time the hon. Law Minister will take for his reply ?

Dr. Ambedkar: In view of the long speeches and the varied arguments advanced I would take about one and a quarter hours : possibly I might take even more, I do not know.

Chairman : If half an hour is taken for the amendments and the Law Minister is going to take one and a quarter hours for his reply we will have to conclude the debate by 11-30. Meanwhile if hon. Members are contented to confine their speeches to ten minutes, so that more hon. Members will be able to take part in the debate, I would like to conclude the debate precisely at 11-30.

Shri Naziruddin Ahmad (West Bengal)**:** It was decided that the amendments will not be put to the House at all.

Pandit Malaviya : The Deputy Speaker said that he would call upon the Law Minster at 11-30. But since we have the time, other Members may be given an opportunity to speak and if you do not think it necessary, the rule about ten minutes may not be laid down.

Mr. Chairman : The hon. Member need not jump to any conclusion, that because a lady is in the Chair, therefore, she may not be fair to the House. I would like to respect the religious susceptibilities of the House as much as anybody else. The Deputy Speaker has told the House that half an hour would be taken for the amendments. It is true that the Hon. Minister will be called upon to reply at 11-30. There is also another traditional procedure, namely the closure motion. In view of these two facts I would like the debate to be concluded by 11-30 and not later.

Shri V. J. Gupta (Madras) **:** What about the closure motion ?

Mr. Chairman : Now that the House has agreed that the Hon. Law Minister is to be called upon to reply to the debate at 11-30, there is no necessity for the motion. Agreement is always better than closure and its acceptance.

***Khwaja Inait Ullah** (Bihar) **:** (*English translation of the Urdu speech*) After deliberating long, I had decided not to say anything about this Bill. I stick to this very decision of not speaking on the matter even today, whether or not Hindu Code Bill be passed. Well, it is a different thing altogether...

An Hon. Member : Do speak.

Khwaja Inait Ullah : I should say, but I do not want to. It is a different thing that our brethren also should treat their sisters and daughters in the same way as I personally do. But, as the name 'Hindu Code Bill' is attached to this Bill and it is said that this legislation is being formulated particularly for those following the Hindu religion, I feel that from the viewpoint of Religion, it is not proper for me as a Muslim to interfere in the social law of Hindus wherein they want to make, or are making changes.

An Hon. Member : It should be done as a human being.

Khwaja Inait Ullah : Yes, I am doing it as a human being, but while being a human being, I am an Indian and a Muslim also. It is, therefore, that I want to give out my impressions just in accordance with my own religion. All the amendments at hand now have compelled me to express my views, There is an amendment that all those, *viz.,* Muslims, Christians and others, who have been exempted from the operation of this law, be also included.

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* P.D., Vol. XV, Part II, 20th September 1951, pp. 2926-29.

Shri J.R. Kapoor (Uttar Pradesh) **:** Only if they so desire.

Khwaja Inait Ullah : If they so desire, and also those who do not. Amendment No. 90 runs **:** "This Code applies to all Indians irrespective of their religion, caste or creed." Likewise, it is also in 91, 92 and 93. Some members—my hon. friend Dr. Syama Prasad Mookerjee, especially while moving this amendment said at the very outset that "secularism" was spreading like a disease in India. I regret to say that my friend, who is so very capable, thinks secularism, which is not a disease but a cure, to be a disease and wants that all the laws under it be made uniform, *i.e.,* the laws that are made for Hindus be also made applicable to the Muslims. This is quite correct if it (the law) is a law of economy, a political law, influencing somebody's character or the social life of India ; it should then definitely be one ; but secularism never means that such laws and personal laws be formulated as may be same for a Hindu and a Muslim. It means that the same will be said about Hindus as about Muslims, though it is not necessary so for a personal law as we have several laws which 'differ from those of Hindus. Just yesterday a Sikh colleague of mine, said that their laws also differed from those of Hindus. I do not intend discussing that aspect of the matter, but I only submit about its application to Muslims.

Our Hon. Minister Gadgil said in his speech yesterday that he wanted to change the social law of the Hindus, and for changing this he advanced the argument, which I think he did successfully, that since this law has been seeing changes', we are also entitled to change it. But he said furthermore that they would try in this way so that in the days to come the Muslims may be included. To him I would 'like to submit humbly that they can change that law only because of the fact that the Hindu Law, as he proved, has been seeing changes. But here I want to tell him that Muslim law has neither been changed for the last 1350 years, nor shall it be changed in the days to come, since Muslims believe that their laws for marriage and division of property are not made by them but made by God and as they appear in the Holy Quran so nobody on the surface of this earth has the right to change them.

Sardar B. S. Man (Punjab) **:** Do the Muslims of the Punjab abide by the law of *Shariat* or the law of Custom, which is entirely different from *Shariat* ?

Khwaja Inait Ullah : If somebody says that the Muslims of the Punjab drink, does it mean that all Muslims will be allowed to take

wine ? If any Musalman does something bad, does it mean that all others will be allowed to do the same ? If any Muslim does not abide by the law of Islam, I am not prepared to make him do so, forcibly. He is at liberty ; he may go against his conscience, against his religion and against his society. But so long as his actions are not harmful to society, neither myself nor any Government can interfere in it.

Sardar B. S. Man : According to Islamic law a thief should be buried alive, or his hands should be cut off. Is this law observed in any Islamic country ?

Khwaja Inait Ullah : My friend Mr. Man has raised a reasonable question. If he sees me outside, I shall explain to him in a convincing way. Here I do not want to take any more time of the House. In Islam there is a permission for some laws, as to what extent they can be brought in line with the laws of the country. I can say to what extent Islam has allowed its laws to be brought in line with the laws of the country, and also the limit which should not be transgressed. I would like to submit to him that, if a thief in an Islamic country is not punished according to the Islamic law, there is a permission that we can change it; but some laws are such that we cannot change. I would, therefore, like to submit to these friends...

Most of my time was taken by my friends in their interruptions. I should also get that amount of time.

Mr. Chairman : That will not be made good.

Khwaja Inait Ullah : I was submitting that it is not a right course for this House to make for Muslims as well the law which to any extent goes against their religious commandments. This Bill can be passed with majority, but I do want to submit humbly that nobody perforce can be asked to follow a certain law. Majority should not compel us. I want that Muslims should not be compelled to agree to this law. Nobody will refuse to agree to the other laws of the majority.

Some of my friends said that all those who reside in India are Hindus. I take pride in calling myself a Hindu. I, too, say that all the inhabitants of India are Hindus. I am positively a political Hindu. Not from today but for the last twenty to twenty-five years I have been calling myself a political Hindu. Here I also want to say that apart from being a Hindu politically, I am and shall continue to be a Muslim by religion.

An Hon. Member : What are you racially ?

Khwaja Inait Ullah : I am Hindu. My forefathers were Brahmins and Brahmin blood is flowing in my veins—that pure blood which has not been mixed up so far.

Well, the sum and substance of my speech is that no such law as is against the Commandments of our religion and of God, be thrust on us, but as an Indian I shall have no objections to agree to any social or economic legislations.

***Kumari Padmaja Naidu** (Hyderabad) : I welcome this opportunity of expressing my unqualified support for the Bill. I would like at the very outset to congratulate the Government on its courage in bringing forward this measure in spite of the widespread and fierce hostility towards it that has been so sedulously instigated by the forces of reaction that still, alas ! today dominate certain sections of this country. The author of this Bill does not stand in need of any words of praise from me. For, with this measure, whether this House chooses to accept or reject it, Dr. Ambedkar takes his place in the long line of social legislators who throughout the ages have laboured diligently, always in the face of opposition, often in the face of persecution, to eradicate social injustice and to enhance the sum total of human happiness.

For many years men and women throughout the length and breadth of this vast country have eagerly awaited the enactment of this Bill. They have watched with increasing alarm its decline from its original forcefulness because it was considered expedient for compromise after compromise to be made in order to win the maximum support for it. But even in its present and mutilated form this Bill is only comprehensive measure that has ever been shaped for the liberation of Hindu women from the age-old bondage of the unequal laws to which they are still subject. I do not ignore, neither do I make the mistake of over-estimating, the volume of protest from the poor deluded women whose ignorance and superstition has been exploited with subtle insidiousness by the vested interests of bigotry determined to defend their last bastions to the bitter end. What a tragic spectacle it is that we witness in India today of Hindu women allowing themselves to be hypnotised into denouncing the very measure that has been so carefully devised to secure for them the equality of laws to which they are entitled under the Constitution. But today it is neither as a woman nor as a Hindu that I plead for support to this Bill. I speak as an Indian, passionately jealous of the honour of India which is pledged not only to this measure but to every other form of social legislation necessary to redress grievous wrongs and to alleviate human

*P.D. Vol. XV, Part II, 20th September 1951, pp. 2929-33.

suffering arising out of unjust laws. So long as any section of the people of this country continue to be debarred, on the grounds of sex or caste or creed, from the full enjoyment of equal rights, so long will our Constitution continue to be a hollow mockery. And what of the freedom for which a long and gallant fight was waged, a fight that was shared by thousands of sensitive Hindu women who, for the first time in their lives, left the precious sanctuary of their sheltering homes. They came to the battlefield and stood besides their brothers and faced jail and lathi charges and often enough, humiliation, worse than death. If today those thousands of Hindu women who fought for the independence of India are to be denied their just rights, then our hard-earned freedom is no more than a handful of dust.

I have studied with some care the numerous speeches and statements that have been made by various Hon. Members of this House, far better qualified than I can ever aspire to be, to judge the technical legal implications of this Bill. I must confess that I have been a little surprised to find that with all their forensic skill and expert dialectic they have not been able to forge many weapons with which to bludgeon this Bill and none of them with sufficient validity of sanction to be lethal. We have all grown a little tired of having it proclaimed in every language, in every conceivable permutation and combination of phraseology of bearing it shouted day after day from the house stops and the market place and highways and by-lanes that this Bill threatens to destroy the very stuff and texture of the fabric of Hindu society. In a statement that unfortunately received nationwide publicity in America, a very distinguished hon. Member of this House has declared that this Bill is an attack on an ancient and gentle religion that has survived for five thousnad years. He announced that because now the very structure of Hindu society was threatened, he intended "to fight and fight and fight against it". It passes my comprehension that anybody who is proud of calling himself a Hindu can talk or even think in such terms without realsing that he is dishonouring the very religion that he claims to defend, as though any of the great religions of the world that have survived through centuries of human history could be endangered by social legislation or by any speeches or writings or other form of human endeavour. If there is any religion in the world that can be imperilled by these trivial things, then it deserves to be allowed to perish.

Speaking three days ago on the floor of this House, Dr. Syama Prasad Mookerjee described in very moving terms the immemorial beauty and wisdom of the teachings of Hinduism. He spoke of its comparable flexibility—I think he used the word adaptability—that had enabled Hindu philosophy to survive through centuries of foreign invasion and alien domination resisting wave after wave of the fiercest political and religious and economic onslaught. Surely, for all time to come Dr. Mookerjee has given the final answer to the futile and foolish argument that any social legislation intended to render justice to the under-privileged can imperil an ancient religion based on the loftiest conceptions of the sanctity and indivisible unity of all life.

Another serious charge which is sought to be levelled against this Bill is that by making legal provisions for divorce it will open wide the flood gates of immorality. It has been proved conclusively by speaker after speaker that there was provision for divorce even in ancient times. We are all aware that more than 75 per cent, of the Hindus in this country have always had the benefit of an easy and simple and effective system of divorce. So, this argument seems to lack any real validity and I think it has been employed merely to indulge in what is fast becoming a national pastime in this country that of disparaging the West and western ways. May I be permitted to express my regret at the growing 325 PSD. tendency in this country to make sweeping generalisations about the morals and manners of other races in other countries ? This tendency is all the more deplorable because only too often hasty judgement is founded on insufficient knowledge, usually gleaned from the sensational publicity given to the doings of a handful of neurotics and decadents such as are to be found in every country of the world. Certainly, they are to be found in every big city of India. Dr. Mookerjee rightly drew our attention to a grave problem that is today troubling the psychologists of the West and that is the growing prevalence of psychoses corresponding to rise in the rate of divorce. But may I respectfully suggest to Dr. Mookerjee that if he would pause and ponder over this problem and analyse it carefully he will find that the psychoses are not the result but the root cause of much of the divorce in the West. In many western countries, particularly those that have been ravaged by the last two great World Wars, the entire equilibrium of life has been seriously disturbed. Acute economic distress, and a morbid obsession with the atom bomb and the imminence of another World War—all these cause

tensions that lead to both physical and mental insecurity. These inevitably result in a certain emotional instability which must of necessity have its repercussions on family life. But the fact remains that whatever may be the abnormal conditions in some countries, whatever may be the outward variations of morals and manners in different races, fundamentally the human race is the same everywhere and even today in every Country of the world the family unit continues to be the very core of human society. Normally balanced men and women value a certain grace and dignity in human relationships and they do not resort to divorce light-heartedly. It is only when they are driven to it as the only ultimate solution of a situation that has become intolerable that they resort to divorce. And if this be true of men, it is I think, a hundralfold more true of women. Because in this changing and unstable world, devastated by wars and revolutions and famines, where all standards of ethical values are wavering, where all national and international codes of morality are vacillating, there still remains one thing changeless and unchanging—one thing that is still today what it was at the dawn of creation and what it will be at the end of time. And that is woman's inherent consciousness of the grave responsibility that rests on her through her high destiny as the creator and guardian of the sacred flame of life. And perhaps in no other country of the world has that consciousness flowered in such perfection of beauty as in this ancient land of ours whose annals are rich with literature and legend inspired by the high ideals of our women. So, it is a little unworthy of us that we should talk lightly and flippantly about the capacity of the Indian woman to wear her freedom with dignity. To do so is to confess to a sad lack of understanding of the very genius of our race.

Some resentment has been expressed by hon. Members who have objected to the theory that this Bill should be passed merely bcause the eyes of foreign countries are upon us. I am in entire agreement with them. However much we may value the goodwill of other countries we cannot and will not shape our lives and legislation to suit anybody else's standards. But there is a far more valid and urgent reason for the passing of this Bill, and that is that our national integrity, our self-respect as people are at stake. Many of the Hon. Members of this House had the high privilege of drafting the Constitution of Free India. Upon them there rests the heavy responsibility of redeeming the pledges that are embodied in it and so the question of accepting or rejecting this Bill is the simple one of whether we affirm or deny the very fundamental principles on which our Constitution is based.

***Shri Brajeshwar Prasad** (Bihar) **:** I rise to offer my unqualified support to clause 2 of the Hindu Code Bill. While doing so, I would like to point out that if this clause is passed it will mean the perpetuation of a great wrong in Hindu society—the *immoral* distinction between legitimate and illegitimate children. The clause says that it applies to any child, legitimate or illegitimate. I know that it is not possible for the State to go to the extent to which I want the Government of India to go. I want the State to abolish the distinction between legitimate and illegitimate children. The stigma of illegitimacy dwarfs the personality of the child. It is inhuman and barbarous that millions of people in this country should suffer from psychological and social handicaps thorughout their lives for no fault of their own. It may be urged that the institution of marriage will be weakened if the distinction between legitimate and illegitimate children is obliterated. I submit that the Heavens will not fall if the institutuon of marriage is weakened in any way whatsoever.

Pandit Maitra (West Bengal) **:** Does the hon. Member want abolition of marriage ?

An hon. Member : No week-end marriage.

Shri Brajeshwar Prasad : The good that is done to society by marriage is great, but the harm that is done to society by illegitimacy is also very great and serious. I think that it is neither possible nor desirable for the State to strengthen the foundations of a discredited social order. I can very well conceive of a society where there is no marriage. The Platonic ideal of a community of wives and children is as valid a concept today as it was during the days of Plato. If we are sincere about our professions of secularism if we have any faith in secularism—let us be frank with ourselves—we must try to emancipate the institutions of property and marriage from the bondage of religion. It is true that the secular ideal has not been realised in any part of the world.

It is not secularism but Christianity that guides the institutions of marriage and property both in America and Europe. I am of opinion that the institution of marriage will not be weakened in any way if the distinction between legitimate and illegitimate children is obliterated ...

Mr. Chairman : I think the hon. Member may reserve these views to the marriage Chapter.

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* P.D., Vol. XV, Part II, 20th September 1951, pp. 2933-35.

Shri Brajeshwar Prasad : I am not expressing my views on the marriage Chapter. I am only visualising certain objections that may be raised with regard to my suggeston that the distinction between legitimate and illegitimate children should be obliterated.

Shri T. Hussain (Bihar) **:** For the sake of information, may I know if my hon. friend is against legal marriage or not ?

Shri Brajeshwar Prasad : If I get an opportunity to speak on the marriage clauses, I am prepared to make the distinction clear. I do not think that the institution of marriage will be weakened if the distinction between legitimate and illegitimate children is obliterated. For, what is the basis of marriage ? Why is the institution of marriage surviving ? It is old age—psychlogical enfeeblement of the mind and heart—which is responsible for the survival of the institution of marriage. It is not for the pleasures of sex ; it is not for the procreation of children that the institution of marriage exists in society. For, both these objectives can be achieved outside the bonds of matrimony. I am opposed to illegitimacy because it is an important cause of abortion, destitution, prostitution, delinquency, further illegitimacy, premature birth, still-birth, crimes, infanticide, veneral disease and cruelty to women and children.

I am not prepared to give my moral support to an article which tends to perpetuate the gravest crime that is done in our society.

***Shri B. Das** (Orissa) **:** At the outset I wish to congratulate Dr. Ambedkar on behalf of myself and all those reformists who are Members of this House and reformists outside for the bold step he has taken to codify the Hindu Law. He has shown great forbearance. He has been characterised as the Manu of our age. But he has been following the precepts of Buddha and showing greater forbearance in agreeing that only the Chapters relating to marriage and divorce be taken for the time being. I support the marriage and divorce clauses of this Code.

Great speeches have been made on the floor of the House. On the side of the Bill my hon. Friend Shri Gadgil made an excellent speech ; so also Pandit Kunzru. On the opposite side the speeches that have to be taken notice of are the ones of Dr. Syama Prasad Mookerjee, Sardar Man and my young friend Pandit Govind Malaviya.

Dr. Mookerjee perhaps forgot the fact that the intermediate stage in the line of reformists from Buddha to Gandhiji was held by great

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Bengalis like Raja Ram Mohan Roy, Keshab Chander Sen and Ramakrishna Paramahamsa. It is no good for the Bengali leader to cry a halt to these reforms. That is not the rigth way. Hinduism has been a progressive religion. The various *Smritis* and *Mimamsa,* are but a codification of Hindu law. As pointed out by my friend Shrimati Padmaja Naidu, who in her ineivitable poetic way paid happy compliments to Dr. Ambedkar, our Constitution has given certain rights to women of India and Dr. Ambedkar is doing nothing more than giving effect to the intentions of the Constitution.

My hon. friend Sardar Man belongs to a great nation, the fighting nation that has saved and maintained the freedom of India. He however struck a discordant note by saying that the Sikhs are not Hindus. I had the privilege of working with many Sikh leaders. Let us, therefore, not harp on our differences on the Hindu Code Bill. But I may say that if the Sikh opinion is sounded, now or hereafter, they would never like to remain stagnant. If and when such opinions are taken, we will find that Sikh women are for progress and advance.

As regards Pandit Govind Malaviya, I have great affection for him, because I was a lieutenant of his revered and august father, the late Pandit Madan Mohan Malaviya. My memory goes back to the thirties when we were passing the Child Marriage Restraint Act on the floor of the House. The great seer that Pandit Madan Mohan Malaviya was, he saw the signs of the times and although he was sad that this House enacted the Child Marriage Restraint Act known as the Sarda Act, he never opposed it in such violent language and in such words of thunder as my young friend Pandit Govind Malaviya did.

Pandit Malaviya : Because these things were not proposed then.

Shri B. Das : True. But I was only quoting my own leader and his august father that he was for advancement and progress. That is all that I wanted to submit.

Shir A. C. Shukla (Madhya Pradesh) **:** For those who are weak, you cannot follow the highest ideal?

Shri B. Das : Those who belong to the orthodox and conservative school in India have helped us in passing the Constitution. They have helped us, though at times a little weakly, in the battle for freedom that we fought for so many years. Since 1947 we are all going forward. If "go forward" is our motto now, then nothing will stop the .advancement and progress of India or any section of our community, be it Hindu, Muslim or any other. Therefore, instead of showing that

strong difference with us they should settle down to the view that India must progress as a nation, and if we are the first nation in Asia and are going to be the first nation of the world, they will help us to advance and progress and not deter us in any way.

I will conclude my speech by reminding the conservative friends in this House that this advancement of the Hindu Code and marriage laws is not a new thing. We have forgotten recent reformers like Sir Hari Singh Gour or Dr. M. R. Jayakar who have made specific indents into the old traditions and customs of Hindu laws, particularly marriage laws. So it is no use our saying that Dr. Ambedkar threw bombshell and a surprise at our consevative friends. We are progressing and Dr. Ambedkar has done one thing. He has faced the whole problem and not attempted piece-meal legislation. Yet to concede to our conservative friends the House is almost agreed to pass only one part of the Hindu Code Bill.

I support the measure.

***Dr. Ambedkar :** I think it is an extra-ordinary event in the history of this Parliament and, I believe, in the history of die past Legislative Assemblies that we should have been engaged in the discussion of a single clause for not less than seven days. I do not think there is any parallel to this. But in view of the fact that many Members have raised the point that this Bill touches part of their conscience, our Prime Minister in a righteous spirit has allowed them and also the Chair, the longest time that any Member might want to consume in order to express his mind on the subject, (*An Hon. Member* : Wrong). I have no complaint against that because it is much better that we should give to every individual, whether he speaks for or against, the fullest opportunity rather than create a feeling in the Members who do not see eye to eye with Government—to go home with a feeling—that they have been choked. I hope that, notwithstanding the fact that seven precious days have been spent in the discussion of this clause, when this clause is put to vote no Member will have a complaint on any such ground at all.

Babu Ramnarayan Singh : I have.

Dr. Ambedkar : The debate on this clause has as a matter of fact taken place in two parts. A part of the debate took place in the last session of Parliament, and this is a sort of a supplementary debate to the original debate. I am sorry to say that notwithstanding the fact

*P.D., Vol. XV, Part II, 20th September 1951, pp. 2937-59.

that I have paid the closest possible attention to the speeches which have been delivered in what I call the supplementary debate it has not been possible for me to find out what new point has been raised in the course of this supplementary debate which was not raised in the original debate. The only new factor which I have discovered in the course of this supplementary debate is the speech made by my friend Dr. Syama Prasad Mookerjee and another by our friend Mr. Man. Beyond that there has been nothing more than an expansive debate on points which were probably touched upon in the original debate.

With regard to Dr. Syama Prasad Mookerjee I have a feeling that it is not necessary to take him seriously at all. He has, it seems to me, no mind of his own.

Babu Ramnarayan Singh : have you ?

Dr. Ambedkar : I have, most certainly.

He was, as hon. Members of the House will know, a member of this Government practically for four years, during which this Bill has been placed before this House by the Government in office. I have not any recollection whatsoever, during the course of these four years when Dr. Syama Prasad Mookerjee was a member of the Government and when the Government had already sponsored this bill and put it before the House and it was in bits being discussed by Members of the House, that there was any single occasion inside the Cabinet when Dr. Mookerjee to my knowledge expressed the slightest difference of opinion on this Bill as against the Government.

Shri Syamnandan Sahaya (Bihar) **:** Is it open for the Hon. Minister to disclose what happened there or what did not happen there ?

Dr. Ambedkar : I am saying so. I remember also that in the earlier part, there were many party meetings held to discuss what should be done with regard to this particular Bill. I have a very clear recollection that in most of the meetings that were held, Dr. Syama Prasad Mookerjee was present and even then I do not recollect a single occasion when Dr. Syama Prasad Mookerjee—in the party which is an informal thing and where members of the Government are free to express their personal opinions, which they may not express outside on account of the joint responsibility—ever said anything against this Bill. It is, therefore, as I said, a matter of moods. (An *hon. Member* : Conviction.) Not at all. Either a man has a conviction or he has no conviction. That is my point. (*An Hon. Member* : He has resigned from the Cabinet.) I am sorry to say that he is to my mind

a very tragic case, a tragic case of a sober, good well-behaved man, who having joined the company of the drunkards rolls from side to side and has become an inebriate himself.

An Hon. Member : A good comparison.

Dr. Ambedkar : Secondly, I have been noticing the performances of Dr. Syama Prasad Mookerjee ever since he has left the Government and has become a member of the Opposition, in fact almost a leading member of the Opposition and I have noticed that he has developed the unfortunate mentality which sometimes Leaders of Opposition develop, namely to oppose everything that comes from Government. In view of that, when a person is not prepared to discuss matters on merits but wants to oppose for the sake of opposition, it is, I think, hardly worth one's while to waste one's time and breath in order to meet his argument. As I said, that is the reason why I do not propose to take what Dr. Syama Prasad Mookerjee has said in a very serious manner.

I, therefore, propose to deal only with the general points that have been raised by various speakers against clause 2 and generally against the Bill. The first point which perhaps is a new point is this, that there is really no necessity for the sort of Bill that we had brought forward. It is contended that the Hindu Society is a very ancient society, much more ancient than the Roman or the Greek Society and perhaps as old as the Egyptian Society. It has been contended that today all that we know about the Roman Society or the Greek Society or the Egyptian Society is their history ; they no longer exist; they have disappeared. The only ancient society which has survived is the Hindu Society and if the Hindu Society has survived while all other ancient societies have disappeared, then its laws, its social structure, its principles must be good. Otherwise, it could not have survived.

This is not the first time that I have heard this argument. I have heard this argument a long time ago and not only heard it from men in the streets, but men who have been occupying most eminent positions such as those who are called the historians of India. This is an argument which had been presented all the time by those who believe in the sanctity of the ancient structure of this society. I must very frankly say that I too have been a student of India's history, although I cannot claim that I am as good a student as many others who adorn the chairs of history in many of our universities. I believe, I have a sufficient understanding of the Indian history and the point that I would like

to raise is this. Is survival enough or whether it is necessary for us to consider whether the plane on which we survived is more important than the mere survival itself ? A man who mixes with his opponent in battle vanquishes him, obtains victory on him also survives. A man who meets his opponent, runs away from him like a coward and he also survives. Is the survival of the victor of the same value, of the same character as the survival of a coward ? I think we ought to consider this question on what plane has the Hindu society survived. (*An Hon. member* : Survival of the fittest). Yes, but on circumstanes. Here my friends will forgive me saying so, when I examine the history of India, we have survived, yes, but we have survived as people who have been from time to time subjugated, vanquished and enslaved. (*An Hon. Member* : Who has not been ?) Yes. My. Hon. friend asks me the question "who has not been ?" There are many countries and many communities who have lost in battle, who have been enslaved but I would like to remind my Hon. friend that if he studies the history of all vanquished people, he will realise that some day, at some time, the vanquished people on other parts of the world have tried to achieve their liberty. I have not seen any such thing in this country. Therefore, the argument that merely because we have survived when other countries have lost and gone into history is one which does not convince me of the goodness or the soundness of the social structure under which we have been living. It has been said that the Hindu society has been a very progressive society. It was an argument which my Hon. friend, Dr. Syama Prasad Mookerjee expatiated at great length and he pointed out that so great a radical reformer like the Buddha was accepted by the Hindu society as a great figure and not only they accepted him as a great figure but they adopted and accepted some of the principles which he advocated in his life.

It is no doubt one of the great qualities of Hindu society to absorb some things from those who oppose it. But, my point is this. Has the Hindu society changed its structure as a result of the absorption of the doctrine of their opponents ? Let me develop the position with regard to the Buddha. What did he preach ? He preached equality. He was the greatest opponent of *chatur varna* ; he was the greatest opponent of belief in the *Vedas* because he believed in reason and . did not believe in the infallibility of any book. He believed in *ahimsa,* the Brahmanic society accepted some things. What did they accept ? They accepted the most innocuous dogma of *ahimsa*. Nobody was

prepared to accept and they did not accept—they opposed—his belief in equality. Notwithstanding the fact that it has abosrbed bits and bits of something which is of an innocuous character it did not touch the main thing on which they were all united namely to maintain *chatur varna.* That is the reason why notwithstanding this assimilative and adaptive quality, they have remained what they have always been. We have for long number of years waited to see whether Hindu society would, as a result of the absorption of the doctrines preached by great men who have been born in this country or great men born outside the country, change its social structure. Most of us, speaking for myself, have been completely disappointed. Whatever else Hindu society may adopt, it will never give up its social structure for the enslavement of the *Sudra* and the enslavement of women. It is for this reason that law must now come to their rescue in order that society may move on.

Pandit Malaviya: Move on to what even Buddha could not do.

Dr. Ambedkar : People have been saying that Hindu society has been changing. The question that I want to ask is this. Is this change in the direction of progress or it is a change in the other direction ? Any one who has studied the history of Arya society from the very beginning to the present day will have to admit, if he is a fair student of history, that whatever change has taken place, it has been a deterioration. There was, as everybody knows, no caste system among the Aryans. There may have been some kind of *varna* system; but the *varna* system never came in the way of inter-marriages. You can find many number of cases of Brahmans marrying untouchable women. *Kashatriyas* marrying *sudras* and *sudras* marrying upper class women.

Pandit Malaviya: Which were the instances ?

Dr. Ambedkar: I can give many instances if you will come to my room. I have got them.

Pandit Malaviya : Why not now ?

Dr. Ambedkar : But, the Aryans never had a hide-bound social system of class division that was later introduced. Nobody can deny that has been a subsequent change.

You examine the position of Hindu women. Our Hon. friend Dr. Maitra. I think, who was a member of the Rau Committee, for the purpose of a thesis for a Doctorate degree of the Calcutta University wrote a book called *The Position of Women in the Hindu Shastras.*

Any one who reads this book will find that women had an equal share in property with men. She was entitled to hold property. Even in Manu you find this statement. Today, what do we find as a result of the changes that have taken place in the Hindu society? Women are completely deprived of property. Do you call this change progress or do you call it deterioration ? Therefore, it is time, I think that we consider this question in a different light, the point on which I wish to proceed is the fact that unless law makes society move, this 1society will not move.

Another argument which was presented to the House was this : that we have no policy ; we have no principle ; we have nothing on which we are proceeding; the only thing on which we are proceeding is a kind of imitation of the western nations. It is said that because the western nations have monogamy, because the western nations have divorce or because the Chinese are trying to do something along that direction, we, in order to put ourselves in the good books of the world at large, are trying to do something along the lines which they have been doing. They have said that our ideal should be, what ? Somebody said Ram ; somebody said Dasaratha; somebody said Krishna ;somebody said this, that and the other. I do not wish to comment upon any of the ideals which have been presented to the House, and I do not ...

Shri Syamnandan Sahaya : You will be well advised not to do so.

Mr. Chairman : Order, order.

Dr. Ambedkar : My ideals are derived from the Constitution that we have laid down. The preamble of the Constitution speaks of liberty, equality and fraternity. We are therefore bound to examine every social institution that exists in the country and see whether it satisfies the principles laid down in the Constitution. Now, so far as your sacramental marriage is concerned, forgive me, I am quite convinced in my own mind that no man who examines mat institution in a fair, honest and liberal spirit can come to the conclusion that our sacramental marriage satisfies either the ideal of liberty or of equality. What is the sacramental ideal of marriage ? Sacramental ideal of marriage described in as few words as possible, is polygamy for the man and perpetual slavery for the woman.

An Hon. Member : Wonderful description.

Dr. Ambedkar : That is so because under no circumstances can a woman get her liberty from her husband, however bad he may be,

however undesirable a person he may be. I want to put one question to the House. Are we for slavery or are we for free labour ? What are we for ? Now, in all economic matters, we have all along been insisting that there must be free labour. Slavery we shall not tolerate.

An hon. Member : Is this slavery ?

Dr. Ambedkar : Now, what is the difference between slavery and free labour ? I think if you examine it carefully, you will come to the conclusion that free labour means the ability and the capacity to break the contract when the necessity for breaking the contract arises.

Shri R. K. Chaudhari (Assam) **:** And is this a contract ?

Dr. Ambedkar : Yes, I shall come to that.

Therefore, if the woman under the sacramental marriage is to get her freedom, then circumscribe as you may, the conditions for her getting her freedom, and as I said, I shall be quite prepared to consider any proposal that may be made by any Member from any side of the House to narrow down the conditions of divorce that have been prescribed in the Bill as it stands. But if you mean to give liberty— and you cannot deny that liberty in view of the fact that you have placed it in your Constitution and praised the Constitution which guarantees liberty and equality to every citizen—then you cannot allow this institution to stand as it is. That is the reason why we are proceeding with this Bill and not because we want to imitate any other people or we want to go in for our ancient ideals which are to my judgement, most archaic and impossible for anybody to practice.

Dr. C. D. Pande (Uttar Pradesh) **:** We are ready to support the Bill, but we do not want these invectives. How far the Hon. Minister is justified in dealing with this subject and resorting to such invectives. I do not know ?

An hon. Member : Why vilify the Hindu religion ?

Dr. Ambedkar : Now, I come to the specific amendments that have been tabled by various Members to clause 2.

Shri Krishnanand Rai (Uttar Pradesh) **:** The House is for divorce and monogamy, but not for this kind of abuse.

Dr. C. D. Pande : We are for these provisions, but we do not want these abuses and invectives.

Dr. Ambedkar : If you had said that before, I would not have made this speech at all and not spent seven days over this Bill.

The Prime Minister (Shri Jawaharlal Nehru) : I am rather surprised at the tender skin of some of the hon. Members. We have had to put up with a series of speeches and things have been said

which have hurt us very much. If that has not been objected to, then I think it is expected that those who disagree with Dr. Ambedkar should[1] not object now.

Pandit Maitra : We have been listening with rapt attention to Dr. Ambedkar, but what we do not want is these invectives and reflections on some of the best ideals which we cherish. The provisions can be defended without injuring the religious susceptibilities of Members.

Mr. Chairman : I do not think there is any need for excitement. As the Prime Minister has said, many Hon. Members who had spoken had said so many things, and naturally when the Hon. Law Minister is replying, he has to make certain statements, and he deserves to be heard.

Dr. Ambedkar : Now, I come to the specific amendments that have been tabled to this clause. As you will observe (*Interruptions*).

Mr. Chairman : I do not want side conversations to go on across the benches.

Dr. Ambedkar : There is one general amdendment, that this Bill should be made optional. This amendment has taken various shapes and forms. In one shape it means that the Hindus to which this Bill is made applicable, should be allowed option either to have it applied to them or not be applied to them. Another shape in which the same amendment has come is that if any other people, such as for instance the Muslims, to whom this Bill does not apply, desire that the Bill should be applied to them, there should be provision in it to that effect. The other shape which this amendment takes is that it should be left to the States to apply or not to apply this Bill. Now, I will deal with the general amendment in all the three shapes in which it has been presented to us.

With regard to the first aspect of the matter, that its application even to the Hindus should be optional. Last time, the Deputy Speaker came to the rescue of many Members by pointing out that there was a precedent for a thing like this. I think hon. Members will remember that he referred to the *Shariat* Act and the Khoja Momin or Khoja Act, and therefore, he said there was no danger or anything strange in making a similar provision so far as the application of the Bill to the Hindus is concerned. Since that time, I have spent much time in examining whether the statment made by the Hon. Deputy Speaker—I am sorry he is not here—is true in fact. And I find that this has been a sort of lapse of memory on his part.

Shri Syamnandan Sahaya : Are you criticising the Deputy Speaker's ruling or are you criticising the remarks of Shri Ananthasayanam Ayyangar ?

Dr. Ambedkar : I am dealing with the statement of Shri Ananthasayanam Ayyangar. I am glad the hon. Member is so technical today.

Shri Syamanandan Sahaya : I am, so all the time. But the Hon. Minister is taking advantage of his position as a member of the Cabinet.

Dr. Ambedkar : I find that in the course of the debate on the Bill which took place in the year 1937, my Hon. friend Shri Ananthasayanam Ayyangar himself raised this question about the applicability of the Bill and I find that his speech is spread over practically to two pages here. As I said, he raised this very question whether that Bill was going to take away the option that was given to the Khojas. He put this question direct to Mr. Jinnah, because as the House will remember, the *Shariat* Bill was not a Government Bill. It was a private Member's Bill which was brought in and practically Mr. Jinnah was in charge of that Bill. And Mr. Jinnah had given an absolutely categorical answer to Shri Aanthasayanam Ayyangar that not only was that Bill complusory, but even the option given to the Khojas would be taken away by that Bill.

Pandit Maitra : Why not inform the House of the background of that Bill also ? I was there when the Bill was being discussed and I know that Mr. Jinnah wanted the Muslims not to be governed by any Hindu law at all.

Dr. Ambedkar : I can give the book, it is here, and anyone who wants to read the whole debate can do so. I cannot spend any more time on this because I have to deal with the amendments.

Shri J. R. Kapoor : That debate is of which year ?

Dr. Ambedkar : 1937. The only difficulty that ...

Shri Bhatt : Was that *Shariat* Bill passed, or referred to a Select Committee or dropped ?

Dr. Ambedkar : The Bill was passed and it was decided that no option was to be given.

The only difficulty that arose was that when they introduced clause 3, it was introduced in the House without the assistance of the draftsman and what happened was that they introduced the word "Act" instead of referring to it as "clause". That defect was cured by my friend Mr. Kazmi, who brought in a Bill in 1943 and substituted the word

"clause" for the word "Act". Therefore, the ground that there is a precedent, I submit, falls through.

[12 Noon]

Shri J. R. Kapoor : May I bring to the notice of the Law Minister that this Act of 1937, I suppose, repeals the previous Kutchi Memon Act, according to which option was given and what the Deputy Speaker as a Member of this House brought to notice was that there was, in fact, in force for a number of years a legislation which gave option.

Dr. Ambedkar : That was before, that was taken away.

Shri J. R. Kapoor : All the same for a number of years that sort of legislation did hold good. That was the point made by him.

Dr. Ambedkar : We are discussing the question whether the 1937 Act gave an option. That is the point.

Shri J. R. Kapoor : Mr. Ayyangar's point was that the 1923 Act gave the option.

Dr. Ambedkar : I am sorry I cannot give way.

Mr. Chairman : If there is any inconsistency in the speech hon. Members may bring it up at a later stage, when there will be a good deal of opportunity.

Shri Amolakh Chand : What is the latest position now ?

Dr. Ambedkar : No option.

Shri Naziruddin Ahmad : There was option for a long time.

Dr. Ambedkar : For Cutchies.

I will take the proposal to grant option. Apart from precedents what would be the consequences ? Suppose we adopt this proposal of giving option. Hon. Members will remember that there are certain States like Bombay and Madras, where the legislature has enacted laws regulating marriage and divorce. In those two Acts there is no option whatsoever given. They are compulsory on every body who resides or is domiciled there. If we adopt this law, it being a central law, it will supersede the laws of the provincial legislature in so far as it is inconsistent with those laws, by reason of the fact that this is legislation in the concurrent field. The one consequence will be that whatever progress the States of Bombay and Madras have achieved in the matter of monogamy and divorce will be completely destroyed.

Shri Gautam (Uttar Pradesh) **:** What will be the position of the Muslims in Bombay ?

Dr. Ambedkar : It applies to the Hindus only. I will shortly come to the Muslims, do not worry. I will not run away from the point. Therefore, the one consequence will be that the two States which have achieved a certain degree of social advancement will be set back.

Shir R. J. Kapoor : Keep it alive.

Dr. Ambedkar : How can you ?

Shri J. R. Kapoor : By saying "Save and notwithstanding anything contained herein this Act will ..."

Dr. Ambedkar : That will be fantastic legislation just to satisfy my hon. Friend. So this consequence has also to be taken into consideration.

What is the position today ? Certain States have laws relating to monogamy and divorce. Certain other States have no such legislation. The one thing that has to be remembered is that under our Constitution no State has got extra-territorial jursidiction. The law applies either to the resident when he is resident there or to a person who is domiciled. If a person marries in Bombay he shall have to marry under that State's Act. If he wants to divorce his wife on grounds which are not permitted by the Bombay law, he can easily go to U.P., where no such law exists, divorce his wife and marry again, thereby altogether destroying the validity of the Bombay legislation. It is something like prohibition. An isolated State cannot have prohibition. If it is to be there it must be all through, so that no man can go to another State and break the law of the State in which he resides normally. Therefore, in this case either there should be no legislation and leave things as they are or if you want legislation, it must be an all India legislation, so that no man or woman would be able to break the law.

The third difficulty is that although they have tabled amendments to the effect that option should be given, they have not indicated the nature of that option. Are women to have the right to make an option or not ? If the father makes an option that this law applies to him, does his option apply to his son and progeny ? If the husband makes an option under this law, will it apply to his wife by reason of the fact that she is his wife ? If the husband does not apply it to himself, will the wife be free to do so ?

Shri Bharati (Madras) **:** All confussion.

Dr. Ambedkar : It would be utter confussion, if such an amendment was adopted.

Shri J. R. Kapoor : What does the proviso to clause 2 say ?

Dr. Ambedkar : I am afraid I cannot add any such proviso. Our law may be deformed in some way but it should not altogether be unaesthetic ; It must be good to look at.

I now come to the other aspect of the argument, namely of allowing other people to have the law apply to them. I should not have dealt with it but for that fact that Dr. Mookerjee referred to the fact that this law was not made applicable to Muslims. He charged the Government with either want of sincerity or want of courage that they can never bring such a legislation so far as the Muslim community is concerned. With regard to this matter, Members have said that we are enacting a piece of legislation which is discriminatory for the simple reason that the Hindus today have the right to marry more than one woman and the Muslims have a right to marry four but that we are taking away the right of the Hindu leaving the right of the Muslim unaffected. That they say, is discrimanatory. With all respect I would invite the attention of Members to article 25 of the Constitution, which says:

> "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess practise and propagate religion."

I want to draw the attention of Members to the words "the right freely to profess and practise their religion". I am not concerned for the moment with propagation of religion.

Last time when I spoke on this Bill, I made it quite clear that in our country, fortunately or unfortunately, the profession of a particular religion carries with it the personal law of the person. You cannot get away from that position. Similarly, when you say to a Muslim that under the Constitution he is free to profess and practise his religion, we are practically giving him the right to practise his personal law. In view of the fact that the Constitution allows different communities to practise their religion and incidentally also to have their personal law, there is nothing discriminatory in allowing one community to have their own law or to modify it in the way they like and to treat the law of the other community in a different way or to modify it.

Pandit Thakur Das Bhargava (Punjab) **:** According to Hindu law a person can marry more than one wife, according to Mahommedan law also a person is entitled to have more than one wife, but there

is no obligation on any Muslim to have more than one wife nor is there any obligation on any Hindu to have more than one wife. The personal religion of both is the same on this point. Similarly, it is not enjoined upon a Mussalman to practise child marriage, nor is it enjoined upon a Hindu to practise child marriage, for the *Smriti* and the *Hadis* of both say the same thing on this point. Therefore, the Child Marriage Act was applied to the Muslims also. It is not going against the Muslim law or the *Shariat* law if we make this law applicable to them today. So far as article 25 is concerned you will not be following this .....

Dr. Ambedkar : I am answering the other argument that we are making a discrimination. To that I am giving the answer that the Constitution permits us to treat different communities differently and if we treat them differently nobody can charge the Government with practising discrimination. That is the point. That being so, another thing I would like to tell the House is that article 25 is an article of great importance, for this reason. As the House will remember, all throughout the history of Europe there has been a great contest between the Church and the State. The State has said that the Church shall not interfere in religion and that the State is supreme over Church. The Church, on the other hand has said that the State is subordinate to the Church, it is only when the Church permits that the State can enact. That has been the general position. In our Constitution we adopted a middle course ; the course that we adopted was this, that while we will permit people to practise and to profess their religion and, incidentally, to have their personal law because the personal law is so imbedded in their religion, yet the State has retained all along in article 25 the right to interfere in the personal law of any community in this country. There can be no argument against that. That is my point. The only question is the time, the occasion and the circumstances.

I want to assert in this House while I am here that I shall hear no argument from any community to say that this Parliament has no right to interefere in their personal law or any other laws. This Parliament is absolutely supreme and we deal with any community so far as their personal law is concerned apart from their religion. Let no community be in a state of mind that they are immune from the sovereign authority of this Parliament.

Shri A. C. Shukla : You pass a law but cannot administer it.

Dr.. Ambedkar : The point really is a very narrow one and that point is this ; whether right now we should make our Bill applicable

to the Muslims—the Hindu Code Bill which has been professedly, deliberately, calculatedly intended to apply to what is called the Hindu community.

Shri J. R. Kapoor : Non-Hindus also.

Dr. Ambedkar : We have been, in making this kind of a legislation, observing a certain necessary procedure as a condition precedent. In all social legislation the Government usually—as a matter of convention and, if I may say so, binding convention—observes the rules of consulting the people affected before any particular piece of legislation is undertaken. Hon. Members well know that with regard to this very Bill there was a Committee which went round from Province to Province, from State to State, took evidence from every section, every community, individuals, organised people, to find out what their opinion was. Nobody can say that so far as this particular Bill is concerned, any Committee or Government at any time consulted the Muslim community—that we are going to enact monogamy and reform the law of divorce so far as the Hindus are concerned, that these are the provisions that we propose to apply to them, what have you to say about it ? No such step has ever been taken and I think it would be not only unwise but a most tyrannical piece of political action to subject the Muslim community to any such provision without their being consulted beforehand.

Pandit Maitra : Why did you not do it beforehand ?

Dr. Ambedkar : The reason why we did not is because some communities like the Hindu community needed the reform so badly—it was a slum clearance.

Pandit Maitra : You had not the courage to do it.

Dr. Ambedkar : This is a slum clearance.

Shri Syamnandan Sahaya : Did you consult the Sikh community ?

Dr. Ambedkar : Oh, yes. I am dealing with it. Do not be impatient. I have consulted them. Do not you make a mistake.

Shri Bhatt : Can the Hon. Minister state whether or not, if Parliament so desire, the opinions of Muslims and Christians may still be ascertained ? What is the obstacle to it ?

Dr. Ambedkar : The obstacle is that the meal has now been served on the table. Let us take it now. It will take time in inviting others. At the same time we do not have so much food as may be offered to others.

Mr. Chairman : I do not want Hon. Members to go on interrupting throughout the length of the debate.

Shri Bhatt : These are sweets which can stay for days together.

Dr. Ambedkar : Regarding the other part of the option, namely that it should be left to the States, in one aspect I have already dealt with it. Suppose some States enact such laws and some States do not, the chaos to which I have already referred would be there and I do not think we could allow any such option to States which would result in chaos in such fundamental matters as marriage and divorce. In this connection I should like to say this that although it is true that the Rau Committee did not visit the Part B States, still when the informal conference took place, I did take care to invite certain representatives of the Part B States. One of them was the Chief Justice of Saurashtra, the Advocate-General of Mysore, I think, was there ...

Shri Bhatt : How is it that the Chief Justice of Saurashtra is taken to represent Part 'B' States ? He was in the service of the State.

Dr, Ambedkar : He knows the conditions prevailing there).

We have done that. Now I come to the question of the Sikhs. My friend, Syamnandan Sahaya has gone away somewhere ...

Shri Syamnandan Sahaya : I am here, very much so, Dr. Ambedkar.

Dr. Ambedkar : Now I come to the question raised by my friend, Mr. Bhopinder Singh Man. His amendment is that this Bill should not be applied to the Sikhs. Well. I have nothing personality to say about this amendment because his amendment is not in any sense solitary as compared with the other amendments which have been tabled by our friend, Mr. Naziruddin Ahmad omitting the Buddhists, Jains, Sikhs, and so on. It is perfectly legitimate for anybody to put. forth his view point, but I think the Hon. Member will allow me to say that the tone of his speech was to me very repugnant and I think hurt me a great deal.

Sardar B. S. Man : *rose—*

Mr. Chairman : I do not want Hon. Members to go on interrupting him.

Shri Syamnandan Sahaya : If the Hon. Minister indulges in such remarks against those who oppose the Bill, we are entitled to interrupt him.

Mr. Chairman : Order, order.

Shri Syamnanda Sahaya : If he goes on like that, the situation may become worse.

Dr. Ambedkar : I am entitled to express my opinion.

Mr. Chairman : Order, order.

Shri R. K. Chaudhari : Why don't you ask the Minister to sit down?

Mr. Chairman : What is the meaning of this ? There is a regular uproar. Hon. Members must maintain order.

Shri R. K. Chaudhari : If the Hon. Minister does not sit down, does that mean order ? You only want to control us; not others.

Dr. Ambedkar : My point is this *(Interruptions*).

Sardar B. S. Man : I take his retort in a sporting spirit. His speech is equally repugnant to us today.

Dr. Ambedkar : I am prepared to accept that.

Mr. Chairman : All that I can say is that Hon. Members should have left it to the Hon. Members concerned to whom the Minister's remark refers.

Dr. Ambedkar : My point is very simple. There can be no dispute that Indians as such are excluding the Muslims ...

Shri Sondhi (Punjab) **:** They are not Indinas. Is that so ?

Dr. Ambedkar : Let me go on in that way, because I do not find exact qualifying words. We non-Muslims, so to say, are not a very united family. I do not think it is desirable to take an unrealistic view and say that we are all one. We are not. But I do say that we ought to make an attempt to come together as far as we possibly can, and we ought not to sow the seeds of discord all the time. When anything of a unifying nature comes before the House, if somebody gets up and says. "Well, we do not belong to this group and we do not want to be governed by this law" ...

Sardar Hukam Singh (Punjab) **:** Why did you not appeal to the President when he was making a declaration as to who would be the Scheduled Castes ? He has made that distinction.

Dr. Ambedkar : It may have been done because of his generous spirit, if you will remember what happened.

Now, that is what I do no like. In my judgement, we ought all of us to make a very sincere attempt to come together, at any rate. Each one of us may have our religious beliefs. One may believe in a God and one may believe in a soul. Those are spiritual matters. But is it not desirable that notwithstanding the differences that we

may have so far as our beliefs are concerned, we should try to evolve one single system of law by which we may be bound in our interrelations ?

Sardar Hukam Singh : Should this not start from you ?

Dr. Ambedkar : Why should you all the time keep on saying. "I am different. I am not governed by this and I am not governed by that. Therefore, do not make your law binding upon me". That is the point of my protest.

Shri A. C. Shukla : Natures differ.

Dr. Ambedkar : The gravamen of my hon. Friend Sardar Man's charge was this that the Sikhs have not been consulted in this matter. My answer to his point is two-fold. If the Sikhs, have not been consulted as Sikhs my contention is that there was no necessity to consult them ...

Sardar B. S. Man : Oh !

Dr. Ambedkar : Please let me continue.

.....because all along the law has assumed that the Sikhs for the purposes of law are Hindus. I have examined Mulla's *Hindu Law* which is a very handy volume and if my hon. Friend were to refer to the index to that volume he will find certain Acts passed by the Legislative Assemblies of this country to amend the Hindu Law, he will find any number of them. But I would like my hon. Friend to point out to me whether in respect of any of those laws which have been enacted by this Parliament effecting a change in the Hindu Law—and made applicable to the Sikhs—they ever consulted the Sikhs or they ever omitted the Sikhs.

Sardar Hukam Singh : Because custom prevails there.

Dr. Ambedkar : I do not find any such instance of consultation at all. Whenever a law has been passed to amend the Hindu Law, it has been made applicable to all persons who have been by frequent judicial interpretation included in the term 'Hindu'.

Pandit Maitra : Then what is the necessity of putting it here ?

Dr. Ambedkar : Because men like you might doubt.

Now I come to the other part and wish to prove that the charge that the Sikhs were not consulted is not founded on facts. I have taken the trouble of going through the evidence taken by the Rau Committee when it toured and went to Lahore. I find that the following persons appeared or made statements before that Commitee. The first person to whom I wish to refer is Justice Teja Singh of the Lahore High

Court. He, as a member of the punjab High Court, wrote a statement for the Rau Committee. I have gone through the main part of it but I have not found any single statement by Justice Teja Singh that this law should not be applied to the Sikhs. I do not know whether my hon. friend accepts that Justice Teja Singh has some right to speak in the name of the Sikh community.

The other gentleman whose name I find from the records is Sardar Varyam Singh. He came as a representative of the Akali Darbar and no doubt he said that this Bill should not be applied to the Sikhs, because the Sikhs, he contended, were a more liberal people.

Sardar Hukam Singh : Who was this gentleman ? Is there any description given about him?

Dr. Ambedkar : Secretary of the Akali Darbar—that is the description that has been given in the records.

The other person who had given evidence before the Rau Committee was Sardar Iqbal Singh. He was a lawyer and he came in his individual capacity.

(Mr. Deputy Speaker *in the Chair*)

Sardar B. S. Man : What did he say ?

Dr. Ambedkar : He said nothing.

Sardar Hukam Singh : Then he can be safely quoted !

An hon. Member : Let him read his statement.

Dr. Ambedkar : Here is the record. You can have the whole information you want. He said nothing against this Act being applied to Sikhs.

Then Sardar Harnam Singh, at present Judge of the Punjab High Court, came and gave evidence, not in his capacity as a Sikh but in his capacity as a represntative of the Bar Council. There again, he raised no such question at all that it should not be applied to the Sikhs.

Sardar Hukam Singh : But what was his opinion about the Hindu Code Bill ?

Dr. Ambedkar : He has not opposed it.

Now, I come to an important circumstance to which I would like to make definite reference. The House will remember that after the Bill was introduced in the House by Mr. Mandal—and it was introduced after the Rau Committee's investigation was complete—even then Government promised that they would issue an executive circular to the various provincial Governments and invite their opinion on the Bill as introduced. That circular was also sent to Punjab.

Shri Sondhi : In what year was that ?

Dr. Ambedkar : 1947.

Shri Sondhi : Before the partiton ?

Dr. Ambedkar : No. After the partition, because the letter has been issued to the East Punjab Government. I will give the substance of the letter from the Home Secretary to the Government of East Punjab to the Secretary to the Government of India, Legislative Department, New Delhi, No. 211, dated the 3rd October 1947. In that the following statement is made:

> "I am directed to forward a copy of the letter so and so from the Registerar of the High Court of Judicature, Lahore, reporting the views of the Hon. Judges, etc. The Punjab Government also invited the views of the Commissioners and Deputy Commissioners, the High Court Bar Association, and five divisional headquarters, as well as of the nine selected non-official organisations believed to be representative of the Hindu and Sikh opinion. Only one of the latter Shri Sanathan Dharma Prathinidhi, Lahore, replied."

I do not think in the face of this my hon. friend can say that no attempt was made to canvass the opinion of the Sikh community. My Hon. friend also said that of the seven members consulted six opposed it. He may be knowing something more about it. I am however entitled to say that before my Hon. friend made his speech, I had one or two conversations with him. He told me that he was particular about the Anand marriage, or the customary ceremony and I told him that although we were passing this Bill, we are not abrogating the Anand Marriage Act which has been passed by the Assembly in order to regularise certain ceremonies which the Sikhs perform for the soleminisation of their marriage and I thought that he was perfectly satisfied with that. But it may be that some other reason has come to the surface which has made him to give rise to these hidden feelings which oherwise might have remained locked up in his breast.

My. hon. Friend read out a judgement of Dr. Bakshi Tek Chand— it is reported in 10 Lahore. Kabul Singh's case. I have examined the facts of this case and the rationale of the case. The only point of dispute was whether a marriage between a *Jat* Sikh and a *Mazhabi* woman was a legal marriage or not. It was contended on the other side that it was not a legal marriage because the *Jat* belonged to a superior class and the woman belonged to an inferior class and inter-caste marriages were not allowed. Mr. Justice Tek Chand held that the *Jats* were *sudras* and the rule that applied to *thraivarani* did not apply to *sudras* and the untouchables are treated by *Shastras* as *sudras*. It is a marriage between *sudras*. Therefore, it is valid.

Sardar B. S. Man : There is difference between an untouchable and a *sudra.*

Dr. Ambedkar : But that is the decision of the court, my hon. friend. The courts have treated both as *sudras* and you know very well there is distinction on that point.

The only point on which my hon. friend could rely was that the Sikhs are liberal and that they do not observe caste. Well, on that ground he ought to welcome this, because we are abrogating caste throughout. Therefore, it is in no sense in conflict with what is happening in the Sikh community.

Sardar Hukam Singh : Our complaint is that we are far in advancer of the stage to which you say you are bringing us up. Please do not pull us down.

Dr. Ambedkar : Different people have different notions about advancement and I have my notions about it. Advance may also mean no law—anarchy—that also may happen. I think I have dealt with all the points that have been raised by the various speakers on their amedments.

Pandit Thakur Das Bhargava : Are you not perpetuating the caste system by accepting the proposal that caste *panchayats* should decide divorce cases?

Dr. Ambedkar : Why talk about it when we have not reached it ? We have not reached that. We shall see it then. For the moment I have dealt with all the points and given reasons why it is not possible to accept any of the amendments proposed by hon. Members. The only amendment that I am prepared to accept is the amendment moved by Dr. Bakshi Tek Chand by which he proposes to substitute the word "followers" for "members".

Shri Naziruddin Ahmad : May I have your permission to correct; a 'mistake which has crept into the debate in the speech of Dr. Ambedkar ? *(Interruption*).

Mr, Deputy Speaker : If he makes any particular mistake it is for him to correct it. The hon. Member will point it out to me. It is not necessary to speak on that. Exception of that kind can be taken to whatever he has said in his speech but it is not our business to go on correcting the speeches.

There are a number of amendments that have been tabled. Hon. Members might have forgotten what the amendments are that have

been moved. I have, therefore, put these amendments into groups according to the subject matter and also according to the clauses.

The Minister of Works, Production and Supply (Shri Gadgil): There are two amendments moved to this clause by the Hon. Minister himself.

Dr. Ambedkar : There are only two amendments.

Mr. Deputy Speaker : I am referring to all the amendments. Certainly, those amendments which the Hon. Minister has himself moved and the one standing in the name of Dr. Tek Chand which the Hon. Minister is willing to accept, will be borne in mind. It is my duty to place before the House what exactly the amendments are on which they are called upon to vote for or against. Instead of going into the details, and for purpose of convenience, I shall put the amendments in each group one by one. I shall take the group : "application to all Indians compulsorily", that is not only to Hindus but Buddhists, Jains, non-Hindus, Muslims, Christians etc. who come under the operation of this Bill.

The question is:

For clause 2, substitute :

"2. *Application of Code.* —(1) This Code applies to all Hindus.

(2) The expression 'Hindu 'in this Code shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnized under the provisions of that Act prior to the commencement of this Code."

The motion was negatived.

Mr. Deputy Speaker : The question is :

For clause 2, substitute :

"2. This Code applies to all Indians irrespective of their religion, caste, or creed."

The motion was negatived.

Mr. Deputy Speaker : Shri Jhunjhunwala's amendment for substitution of clause 2 is barred as the House has already decided upon this.

Then, I come to the other set: that this Code should apply only to those who make a declaration, and even then, the parts that are declared should apply.

The question is :

For clause 2, substitute:

"2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

The motion was negatived.

Mr. Deputy Speaker: The next two amendments of Shri J. R. Kapoor also go with his amendment negatived just now. They are also therefore deemed to be negatived. Then, the question is:

In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, in the proposed proviso to clause 2, for the words beginning with "unless such persons" to the end, substitute:

"unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

The motion was negatived.

Mr. Deputy Speaker: The question is:

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such minor attains majority."

The motion was negatived.

Mr. Deputy Speaker: The question is:

To clause 2, add the proviso:

"Provided that the provisions of Parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisons, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.

Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration."

The motion was negatived.

Shri J. R. Kapoor : Sir, in view of the changed circumstances of the case, I would request leave of the House to withdraw my amendments Nos. 97 and 272. But all the same I would like to move at a later stage, an amendment, when we know how exactly this Part stands when we have gone over the whole of this chapter relating to marriage and divorce.

The amendments were, by leave, withdrawn.

Mr. Deputy Speaker : Then there is amendment No. 336 standing in the name of Shri J. R. Kapoor. Does he want me to put it ?

Shri J. R. Kapoor : Yes, Sir. and I hope the Hon. Law Minister will please go over it and see what it means, otherwise there will be difficulty in enforcing what he wants to enforce.

Mr. Deput-Speaker : Why at this stage. All persuation has already been done.

The question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3 in the proposed amendment to clause 2, after part (1), insert:

"(1A) in sub-clause (3) for the words 'the provisions' the words 'any or more of the provisions' be substituted."

The motion was negatived.

Mr. Deputy Speaker : The question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1) insert:

"(1A) in sub-clause (3) insert at the end 'in respect of any or more of the matters dealt with herein'."

The motion was negatived.

Mr. Deputy Speaker : Now I take another topic—inclusion or exclusion of categories of people.

The question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (1) (ii) of the proposed amendment to sub-clause (1) of clause 2, after "Sikh religion" add :

"or to any other religion or faith except Muslim Christian, Parsi or Jew religion."

The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (d) of sub-clause (1) of clause 2, at the end, add:

"subject to his rights and liabilities before his conversion."

The motion was negatived.

Mr. Deputy Speaker : The question is:

After part (d) of sub-clause (1) of clause 2, add:

"(e) to a Muslim or Christian converted from Budhism, Jainism, Sikhism or Hinduism in his life time."

The motion was negatived.

Mr. Deputy Speaker : The question is:

Omit part (b) of sub-clause (1) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 274, which also stands in the name of Mr. Naziruddin Ahmad is the same as the one just now negatived by the House. That need not be put.

Then, the question is:

For part (b) of sub-clause (1) of clause 2, substitute :

"(b) to any person who is a Jaina by religion."

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (b) of sub-clause (1) of clause 2, for "Jaina or Sikh" substitute ; "or Jaina".

The motion was negatived.

Mr. Deputy Speaker : Amendments Nos. 101 and 102 are only earlier amendments which are the same as the amendments which have been just now negatived by the House. I need not put them.

The question is :

In part (b) of sub-clause (1) of clause 2, omit "or Sikh".

Mr. Deputy Speaker : The queston is:

In Clause 2, omit "Sikh", wherever it occurs.

The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (c) (i) of sub-clause (1) after "illegitimate" insert: "who, if he has attained the age of eighteen years, is himself a Hindu and"

The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (c) (ii) of sub-clause (1) of clause 2, after "belongs or belonged" insert "and who, if he has attained the age of eighteen years, is himself Hindu".

The motion was negatived.

[1-00 P. M.]

Mr. Deputy Speaker : Amendment No. 277 is barred by a previous amendment and therefore need not be put.

Shri J. R. Kapoor : My next amendment deserves acceptance. It is an improvement in the language.

Dr. Ambedkar : I will improve my own language.

Pandit Thakur Das Bhargave : It is only a grammatical change. Instead of the present alone it seeks to include the past also.

Mr. Deputy Speaker : The wording in the clause relates to the present. There is a difference. It is not a formal amendment.

The question is :

In Part (c) (i) of sub-Clause (1) of clause 2, after "parents are" insert "or have been".

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 105 is covered by this and need not be put.

Then, the question is :

After part (c) (ii) of sub-clause (1) of clause 2, add:

"(iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs ;"

The motion was negatived.

Mr. Deputy Speaker : The question : The question is :

After part (c) (ii) of sub-Clause (1) of clause 2, insert:

"(iii) to any orphan or abandoned child brought up by the state."

The motion was nagatived.

Mr. Deputy Speaker : The question is:

After sub-clause (2) of clause 2 insert:

"(2A) This Code also applies to any woman professing any religion who has married a Hindu, buddhist, jain or Sikh."

The motion was negatived.

Mr. Deputy Speaker : The question is:

Omit sub-clause (2) of clause 2. The motion was negatived.

Mr. Deputy Speaker : The question is :

For sub-clause (2) of clause 2, substitute :

"(2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu Law or by any custom or usage as part of that law in respect of any matters dealt with herein."

The motion was negatived.

Mr. Deputy Speaker : The question is:

In sub-clause (2) of clause 2, after "Parsi" insert "Sikh".

The motion was negatived.

Mr. Deputy Speaker : The question is :

Omit proviso to sub-clause (2) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In the proviso to sub-clause (2) of clause 2, for "in respect of those matters" occurring at the end, substitute :

"In respect of matters which that person has not voluntarily chosen."

The motion was negatived.

Mr. Deputy Speaker : The question is :

After sub-clause (1) of clause 2, insert:

"(1A) This code shall not apply to the Scheduled Castes and Scheduled Tribes."

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 281 is barred. I now come to amendments of a formal and verbal nature. First I shall put amendment No. 3 by Dr. Ambedkar. The question is:

In clause 2—

(1) in sub-clause (1),—

(i) in part (a) for "Hindus, that is to say, to all persons professing the Hindu religion" substitute "persons who are Hindus by religion" ;

(ii) in part (d), for "Hindu religion" substitute "Hindu, Buddhist, Jaina or Sikh religion";

(2) Omit sub-clause (4).

The motion was adopted.

Shri R. K. Chaudhari : Sir, I want to oppose the next amendment of Dr. Ambedkar. I think he is making one of the most colossal mistakes of his life.

Shri J. R. Kapoor : What is the subject matter ?

Mr. Deputy Speaker : Mr. Chaudhari is opposed because Dr. Ambedkar wants to substitute "tribe or community" for "community" Perhaps Dr. Ambedkar's fear is that "community" may not include a tribe; therefore, he wants to make it more specific.

The question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (1) (i) insert:

"(ia) in part (c) (ii) for "community" substitute 'tribe or community',"

The motion was adopted,

Mr. Deputy Speaker : The question is :

In part (a) of sub-clause (1) of clause 2, for "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hinuds by religion".

The motion was negatived.

Mr. Deputy Speaker : The question is :

For part (b) of sub-clause (1) of clause 2, substiute:

"(b) to all persons who are Buddhists, Jains or Sikhs by religion ;"

The motion was negatived.

Dr. Deshmukh (Madhya Pradesh) **:** May I point out that the hon. Doctor had suggested that he wants to hold over the final passing of the clause ?

Mr. Deputy Speaker : The hon. Member was perhaps not present when I later on modified that it is only a formal changes in the name—whether it should be called Hindu Code or Hindu Marriage and Divorce (Amendment) Code. That is only a formal matter.

Then, the question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (1) (ii), insert:

"(iii) insert a new part (e) as follows:

'(e) to a convert to any religion or faith after the commencement of this code.' "

The motion was negatived.

Mr. Deputy Speaker : What about amendment No. 91 moved by Pandit Thakur Das Bhargava ?

Pandit Thakur Das Bhargava : I beg leave to withdraw it.

The amendment was by leave, withdrawn.

Mr. Deputy Speaker : The question is ;

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in the proviso to sub-clause (2), insert at the end 'unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also.' "

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 93 is barred as it is similar to one already negatived.

Then, the question is:

Omit sub-clause (3) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 283, being the same, is barred. What about amendment No. 238 moved by Mr. Jaspat Roy Kapoor ? Hon. Members must be attentive.

An Hon. Member : Your amendments are being negatived.

Shri J. R, Kapoor : I am sorry, Sir but there is this talk going on here.

Mr. Deputy Speaker : The Hon. Member himself speaks and quarreles with other Members.

Shri J. R, Kapoor : Sir, I beg leave to withdraw it.

The amendment was, by leave, withdrawn.

Mr. Deputy Speaker : What about amendment No. 116 moved by Shri Gokulbhai Bhatt ?

Shri Bhatt : I beg leave to withdraw my amendment. It is not necessary.

The amendment was, by leave, withdrawn.

Mr. Deputy Speaker :

Then, the question is:

Omit sub-clause (4) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 284, being the same, is barred. The next amendment is No. 118 of Mr. Naziruddin Ahmad that after sub-clause (4) of clause 2, a new sub-clause be added, namely : "(5) Notwithstanding anything in this section this Code shall

apply only to such areas or to such persons or classes of persons in any State ... etc.". This has been held over to clause 1. Amendment Nos. 118 and 285 go together and they are held over. I would suggest to the hon. Member that if he wants to have these taken up in connection with clause 1 he may table a separate amendment.

Shri Naziruddin Ahmad : I shall table a separate amendment to suit the context of clause 1.

Mr. Deputy Speaker : The question is :

For part (d) of sub-clause (1) of clause 2, substitute :

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

The motion was negatived.

Mr. Deputy Speaker : The question is:

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

The motion was negatived.

Mr. Deputy Speaker : The question is:

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

The motion was negatived.

Mr. Deputy Speaker : The question is ;

To clause 2, add the proviso :

"Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to any one unless a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not

be governed by this Act and the same shall then not apply to him."

The motion was negatived.

Mr. Deputy Speaker : The question is;

In part (a) of sub-clause (1) of clause 2, after "including' insert "Buddhists, Jains, Sikhs".

The motion was negatived.

Pandit Malaviya : I do not press my next amendment.

Mr. Deputy Speaker : Now, we have disposed of all the amendments. Is there any Hon. Member whose amendment I have not put to the House ? I take it that there is none.

The question is :

That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

*HINDU *CODE—contd.*

Mr. Deputy Speaker : The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Yesterday we disposed of Clause 2 ; the major contentious clause is over. I hope the other clauses will be passed quickly.

Clause 3.—(*Definitions*)

The Minister of Law (Dr. Ambedkar) : I beg to move:

In clause 3,—

(i) for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires";

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv), (v) and insert the following as item (i), namely:

> '(i) "Aliyasantana law' means the system of law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);';

(iii) in term (iii), as to renumbered, omit "except in sections 41 and 49";

(iv) in the *Explanation* to item (v), as so renumbered, for "this clause" substitute "clause (iv) and (v)" ;

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi) and insert, the following as items (vi) and (vii) namely :

'(vi) "Marumakkattayam law" means the system of law applicable to persons—

> (a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act, H of 1100, the Travancore Ezhava Act, III of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107 ; the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113 or
>
> (b) who belong to any community, the members of which are largely domiciled in the State of Trvancore Cochin or Madras, and who, if this Code had not been passed, would have been governed

* P.D., Vol. XV, Part II, 21st September 1951, pp. 2974-3008,

by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law ;

(vii) "Nambudri law" means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);

(vi) in item (viii) as so renumbered, for "any" substitute "a".

Shri Naziruddin Ahmad (West Bengal) **:** I think that it would be better to proceed seriatim, sub-clause by sub-clause, and subject by subject. Otherwise, the difficulty would be that the debate would be of too general a nature. In clause 2 the debate was much of a general nature because we did not consider individual items or groups.

Mr. Deputy Speaker : I agree, I shall proceed in the order in which they have been noted in the order Paper.

Dr. Ambedkar : My amendment is so to say in two parts. Item 1 of my amendment is merely a verbal change. It has been pointed out to me that the words that are used in the existing clause "unless mere is anything repugnant in the subject or context" are not in consonance with the language which we have been using since the passing of the Constitution, the Constitution uses the phraseology "unless the context otherwise requires" and in order to bring the language of this Bill in consonance with the language of the Constitution, I am making that particular amendment, it is merely a change of words.

With regard to the other amendments, they are necessary because it has now been proposed that the marriage and divorce law should also apply to persons who are governed by the Marmuakkattayam and Aliyasantana law. As the subsequent sections deal with that aspect; of the matter, it is necessary to enlarge the definition clause so that necessary definitions which relate to that matter may be brought in and the definition clause be made complete.

Mr. Deputy Speaker : amendment moved :

In clause 3,—

(i) for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires";

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv) and (v),and insert the following as item (i), namely :

(i) "Aliyasantana law", means the system of law applicable to persons who, if this Code had not been passed, would have been

governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);

(iii) in item (iii), as so renumbered, omit "except in sections 44 and 49";

(iv) in the *Explanation* to item (v), as so renumbered, for "this clause" substitute "clauses (iv) and (v)";

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi), and insert the following as items (vi) and (vii), namely :

(vi) "Marumakkattayam law" means the system of law applicable to persons—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act, XXII of 1933), the Travancore Nair Act, II of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107, the Cochin Nayar Act, XXIX of 1113, or the Cochin Marurnakkathayam Act, XXXIII of 1113, or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this code had not been passed, would have been governed by any system of inheritance in which descent is traced through the female line ;

but does not include the Aliyasantana law ;

(vii) 'Nambudri law' means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106) ;' ;

(vi) in item (viii) as so renumbered, for "any" substitue "a".

Shri Naziruddin Ahmad : My amendment No. 410 comes in by way of priority according to the subject because this amendment is the real clause. My amendment seeks to delete 'Aliasantana law'.

Mr. Deputy Speaker : The Hon. Member may move it.

Shri Naziruddin Ahmad : I beg to move: In the amendment proposed by Dr. Ambedkar, in part (ii), omit the proposed part (i) of clause 3.

Before that I have certain verbal and formal amendments which I think, need not be pressed before the House, that is in the amendment proposed by the Hon. Minister of Law in item (ii) there is the renumbering amendment that runs all through the amendments. If we take up the renumberings at this stage it will create confussion, and we do not know where we would be. They should be done by the Secretary or the Draftsman and therefore I suggest that for the time being we should eliminate these renumbering amendments. I have a lot of amendments to cure these verbal irregularities, but I do not wish to move them because I want to leave them entirely to the Secretary.

Coming to my amendments, they are for the deletion of the definition of Aliyasanatana law and I have other amendments to delete the definitions of Marumakkattayam and Nambudri law. The reason for moving this amendment is this ; that this is as well as other amendments relate to these special laws, which I want to delete because this is the policy of the Bill, namely to make no reservation, no exceptions in any case. In the case of Sikhs we have decided to make no exception. In the case of others we have made no provision to exclude them from the operation of the Code. That being the accepted principle ...

Mr. Deputy Speaker : I understand the Hon. Minister to say that he now proposes to extend all the provisions of this Act to both these classes also.

Shri Naziruddin Ahmad : That means the marriage and divorce law laid down in the Bill will also apply to those Hindus who are now governed by Aliyasantana, Marumakkattayam and Nambudri law separately.

Mr. Deputy Speaker : Therefore, the objection is over.

Shri Naziruddin Ahmad : The objection is that if general provisions are to apply to all Hindus so far as marriage and divorce is concerned, the definition is absolutely unnecessary ! It is rather misleading.

Mr. Deputy Speaker : We have accepted this. We had included others as in the case of Sikhs. There is no need for separate definition. The Bill includes it and therefore it is not necessary. Exception is made for Aliyasantana and Marumakkattayam law. They are excluded from the operation of marriage and divorce laws as envisaged in the Bill.

Shri Naziruddin Ahmad : I do not think they should be excluded at all.

Mr. Deputy Speaker : That is exactly what the Hon. Law Minister is trying to do.

Dr. Ambedkar : That is what I am trying to do.

Shri Naziruddin Ahmad : By the inclusion of this definition ? If that is the specific purpose, then, my amendment is needless.

Mr. Deputy Speaker : Originally, those who were governed by the Aliyasantana Act and Marumakkattayam law were excluded and they were allowed to be regulated by those two laws. The Hon. Law Minister now feels that they must also be brought into the frame work of the Act so as to bring about uniformity. That is why he is adding this.

Shri Naziruddin Ahmad : My perplexity arises from the fact that even apart from this definition, they will ordinarily be included.

Mr. Deputy Speaker : The Bill specifically excludes them.

Shri Naziruddin Ahmad : That portion should be deleted. There is repetition.

Mr. Deputy Speaker : The hon. Member began under the wrong impression that originally they were included and the Law Minister wants to exclude them.

Shri Naziruddin Ahmad : The exclusion should be by amending the general clause; not in the definition.

Mr. Deputy Speaker : That is another matter. As a matter of substance, hon. Member's amendment has absolutely no force.

Shri Naziruddin Ahmad : I quite agree.

Mr. Deputy Speaker : Then, why should he look at formal affairs and verbal amendments. If it is necessary, let us have this definition for the purpose of clarification instead of relegating it to some General Clauses Act.

Shri Naziruddin Ahmad : Not the General Clauses Act, but the general definition of Hindus under this Act. It should apply to all Hindus. This Aliyasantana law governs the Hindus. This is special mention and then inclusion. The inclusion is already there.

Mr. Deputy Speaker : The backbone of his objection is broken. The hon. Member is trying to get at some formal affair. Is it necessary ?

The Minister of Home Affairs (Shri Rajagopalachari) : I think the hon. Member has not realised the actual position. There are two ways of excluding certain classes or groups; one by actually ignoring them in the whole Code and another by referring to them and providing for them as exception. If the Hon. Law Minister has chosen now to

provide for them by making exceptions in the body of the Code, it is necessary to deadline them.

Mr. Deputy Speaker : It is the other way about. He has already made exceptions in favour of these and he has povided for exclusion from the Bill.

Shri Rajagopalachari: That is what I have said.

Mr. Deputy Speaker : What he wants to do is to include them.

Shri Rajagopalchari: I think the hon. Member who has moved the amendment is thinking that we have applied the whole Code bodily to these people and therefore, since you have defined the Hindus, why should you define these people. The answer is, we do not propose to apply the provisions in the Code bodily to them but to provide exceptions and therefore it is necessary to define who they are.

Shri Naziruddin Ahmad : I fail to appreciate all this fineness. If the Code is to apply, it should straight forward be applied to them, instead of leaving any exceptions.

Shri Rajagopalachari: Suppose we applied it to them ; "they" should be defined here. That is what is being done.

Shri Naziruddin Ahmad : It should apply to all; they are already included in the definition of Hindus.

Shri Rajagopalachari: There are exceptional provisions for these people.

Mr. Deputy Speaker: Let me understand first; without understanding, I cannot put it to me House. As the Bill stands at present, clause 51 says :

"(1) Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 to obtain the dissolution of a sacramental marriage, whether solemnised before or after the commencement of this Code."

Therefore, under the Bill as it has emerged from the Select Committee, Marumakkattayam Law is allowed to apply so far as those persons who are governed by this law are concerned. What the Hon. Law Minister wants to do is not to create exceptions in favour of any particular class, but to bring them all under this Act.

Dr. Ambedkar: Yes.

Mr. Deputy Speaker : That is what Mr. Naziruddin Ahmad wants. Originally he was under the impression that an exception is sought to be made. He was under the impression that originally those governed by the Marumakkattayam law and Aliyasantana law were governed

by this Code and the Hon. Law Minister wanted to make exceptions and that is what he objects to. Now that he knows that the original Act made an exception and they are being brought under it, he withdraws his objection, but he clutches,—let me withdraw that word— he wants to raise a formal thing, regarding the definition of Marumakkattayam and Aliyasantana. The substance has gone. Why should he worry himself over these formal things ?

Shri Naziruddin Ahmad: Clause 51 should be deleted. That would be enough.

Mr. Deputy Speaker: That is a matter of procedure.

Dr. Ambedkar: We will come to that later on.

Mr. Deputy Speaker: We will come to that later on.

Shri Naziruddin Ahmad : There are special provisions in this Bill for all these people. That should be dropped. The definition should also be dropped.

Mr. Deputy Speaker: There is no harm in making it clear.

Shri Naziruddin Ahmad: It would only be showing one's nose in a round about way.

Mr. Deputy Speaker : Aliyasantana law is not a general law going into the customs and other things. This is a Code.

The Minister of State for Transport and Railways (Shri Santhanam): After we have finished the whole thing, if any substantial provision of Aliyasantana Act does not come in, then we can revert to this, if it is superfluous. It is better to start with a definition because some provisions as they stand has reference to it.

Mr. Deputy Speaker : I suppose the hon. Member Mr. Naziruddin does not see any necessity for this. As a matter of fact, his point has been put forward in the Hon. Law Ninister's amendment. Therefore, all the amendments standing in the name of Mr. Naziruddin Ahmad are not moved.

Shri Naziruddin Ahmad : No, no.

Deputy Speaker : Amendment No. 372 is a formal one, I shall take the responsibility for re-numbering.

Shri Naziruddin Ahmad : Amendment 410 is not pressed.

Mr. Deputy Speaker : Then, there are amendments 374 and 375.

Shri Naziruddin Ahmad : I press amendment No. 374. But, my amendment No. 377 comes earlier.

Mr. Deputy Speaker : The hon. Member may move it. So far as formal amendments are concerned with regard to brackets, etc., I shall instruct the office about them.

Shri Naziruddin Ahmad : I shall not move then any more at all. That is quite enough. I Move Amendment No. 377.

Pandit Thakur Das Bhargava (Punjab)**:** Am I to take it that you have exhausted sub-clause (i) ? I have got an amendment.

Mr. Deputy Speaker: Let me first finish the first clause.

Pandit Thakur Das Bhargaya: I have no objection if Mr. Naziruddin Ahmad claims to move all his amendments first.

Shri Naziruddin Ahmad: It is not a claim; it would be more convenient.

Mr. Deputy Speaker: Let me first dispose of sub-clause (i) of clause 3.

Pandit Thakur Das Bhargava : I beg to move; In part (i) of clause 3, for the words "among Hindus" substitute the words "among persons to whom this Code applies."

I do not want to make any speech as the thing is very apparent.

Mr. Deputy Speaker : Amendment moved :

In part (i) of clause 3, for the words "among Hindus" substitute the words "among persons to whom this Code applies."

Shri Santhanam : Clause 2, sub-clause (3) covers this point fully.; 'Hindus' means all people to whom this Code applies.

Mr. Deputy Speaker: This House has already adopted the definition.

Pandit Thakur Das Bhargava : I know that. But, nothing is lost if we use these words which are very expressive. Suppose a person reads any other section ; then, he has to know what me definition is. Unless he keeps the definition in mind, he would not be able to know to whom this Code applies. These words express the meaning fully.

Mr. Deputy Speaker : Even then, he has to revert back to the meaning of persons to whom this Code applies. We are only using and expanded definition.

Pandit Thakur Das Bhargava : 'Persons to whom this Code applies': he has to take this definition everywhere. This is more particular. I leave it to the House.

Mr. Deputy Speaker : I am only trying to know whether it is a matter of substance on which greater emphasis should be laid or a formal thing. Anyhow, I take it as moved.

Pandit Thakur Das Bhargava: I beg to move:

In part (i) omit the words "and uniformity".

Shri Santhanam : I want to get one point clear. Does the hon. Member suggest that if there was a custom one thousand years ago in a particular…….

Pandit Thakur Das Bhargava: I have not yet spoken on my amendment, and my hon. Friend there is already opposing it.

Mr. Deputy Speaker : No, the mover only means that uniformity is a difficult matter for the whole of India. Amendment moved:

In part (i) omit the words "and uniformity".

Pandit Thakur Das Bhargava : With your permission I shall move my other amdendment also :

In part (i) of clause 3,—

(a) after the words "group or family" occurring in line 4, add the following;

"or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family" ; and

(b) Omit the first proviso.

If you will allow me, I shall argue out my point in moving these amendments.

Mr. Deputy Speaker: Not now, I shall come back to the hon. Member. Amendment moved :

In part (i) of clause 3,—

(a) after the words "group or family "occurring in line 4, add the following :

"or any rule, which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family"; and

(b) Omit the first proviso.

Shri Jhunjhunwala (Bihar)**:** I want to move my amendment No. 413 in a slightly modified form, using the word "*varna"* for the word "caste" occurring there.

Dr. Ambedkar : It rather confuses me if the word "sub-clause" is used when referring to these parts or items of the clauses. In matters of this sort, we speak of items. They are referred to as item 1 and item 2 and so on. There are no sub-clause to these clauses. They may please be referred to as entries or items.

Mr. Deputy Speaker : There are these clauses and then these sub-clauses and so I.....

Shri Santhanam : No, Sir, Sub-clauses are numbered as usual.

Dr. Ambedkar: Whatever word may be adopted, it is better to avoid the word "sub-clause".

Mr. Deputy Speaker: All right. I shall use the word "entry" or "part". Here Mr. Jhunjhunwala wants to modify his amendment by changing the word "caste" into "*varna*"—as was suggested by the Law Minister yesterday.

Shri Jhunjhunwala: I beg to move :

In part (i) after the word "tribe" insert the word "*varna*".

I would, also like to move my amendment No. 414 with a slight modification, omitting the words coming after the words "principle castes", I beg to move :

After part (i) insert the following new part:

"(ia) the word "vama" means according to the context in each case four principle "*vamas*".

Mr. Deputy Speaker: Amendment moved:

After part (i) insert the following new part:

"(ia) the word" "*Varna*" means according to the context in each case four principle "*varnas*".

Shri R. K. Chaudhari (Assam)**:** I beg to move:

Omit the Provisions to part (i) of clause 3.

Mr. Deputy Speaker : Amendment moved :

Omit the provisions to part (i) of clause 3.

Shri Syamnandan Sahaya (Bihar)**:** I also want to move the amendment. We both of us have given notice of the amendment jointly.

Mr. Deputy Speaker: I do not attach much importance to the moving of the amendment by all the Members. But if the hon. Member wants to withdraw any amendment, then I will see that the other hon. Member has his say or if the hon. Member is absent, then the other hon. Member will be able to withdraw it.

Captain A. P. Singh (Vindhya Pradesh)**:** I want to move my amendment No. 378, dealing with part (viii).

Mr. Deputy Speaker: We have not come up to that part.

Shri Syamnandan Sahaya: You were pleased to say that you would first deal with all amendments belonging to one category or group. I suggest that only the amendments dealing with the definition of one thing be taken up now, discussed and disposed of and then we go to another set of amendments dealing with another point. Otherwise it will lead to difficulties.

Mr. Deputy Speaker: That is exactly what I am doing. We are now dealing with amendments to only part (i)—"Custom" and "usage."

Shri Bhatt (Bombay)**:** I have tabled an amendment which must have reached you. It is about custom and usage.

Mr. Deputy Speaker: Well, what is it ?

Shri Bhatt: It is about part (i).

Mr. Deputy Speaker: But I have not got a copy. I would not like the House to be taken by surprise. At least the mover of the Bill should be given a copy of the amendment sufficiently in advance and also a copy sent to me. That is the minimum I expect. We should not be taken by surprise.

Shri Bhatt: I thought you would probably have got a copy of it from the office as I got one just half an hour ago.

Mr. Deputy Speaker: When was it delivered ?

Shri Bhatt: This morning.

Mr. Deputy Speaker: I do realise that some amendments may have to be allowed either from the Government side or the other side at the last moment. But I would suggest to hon. Members that at least the Law Minister must be given previous intimation of such amendments and a copy also sent to me. I will rigorously adopt this rule so far as new amendments are concerned. They should be agreed to by all sections of the House.

10 A.M.

Shri Bhatt: For part (i) of it I have proposed I beg to move: For part (i) of Clause 3, substitute the following :

"(i) the expressions 'custom' and 'usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family :

Provided that the rule is certain and not unreasonable; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family,".

Mr. Deputy Speaker: What is the difference between this and that?

Shri Bhatt: That I have taken out of it. A portion of it has been retained. That is why I have drafted this amendment in this way.

Mr. Deputy Speaker : Amendment moved :

For part (i) of Clause 3, substitute the following :

"(i) the expressions "custom' and 'usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family :

Provided that the rule is certain and not unreasonable; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family.".

Shri Syamnandan Sahaya: The amendment moved by Shri R. K. Chaudhari relates to part 2 and not one.

Dr. Ambedkar: It refers to the clause as it stand now.

Pandit Thakur Das Bhargava : In connection with my amendment Nos. 444 and 446 I would like to make some general observations regarding custom. The sole basis for the present Code is that such customs and laws as are opposed to the principle to be enacted in the Code will be abrogated for all time. I take it that the central principle of this codification is that all various customs in all parts of the country will, as a matter of fact, be so unified by the provisions of the Act that one law shall be applicable to the whole of India for the communities concerned. I have accepted that basis as good and I am in favour of the codification, because our laws will then become certain and they will become applicable to all Hindus all over India.

Apart from the unification of the customs sought to be done by the Code, there are many customs and laws which .we want to see changed. It is not only an attempt at codification. It is certainly a code in which we want all our bad customs and laws to be modified and hence in that respect it is a reform Bill also. I am in favour of the provisions of the Bill because I think they are a great advance upon the present practices and they imply reforms of a very great degree among the laws and customs now obtaining among the Hindus.

But when I find Dr. Ambedkar agreeing to this or that custom coming into the Bill I feel that the essential principle on which the Code is based is being sacrificed to opportunism. I know that he is. in a great fix and I have nothing but sympathy for him. Left to himself I am sure he will not accept these customs. Left to myself I would behave in the same way and there is no difference so far as this attitude is concerned between him and myself.....

Mr. Deputy Speaker : We are now on the definitions only. Such matters as *sapinda, sagotra* or degrees, in regard to which whether custom ought to be allowed to prevail, we will deal with them, we come to individual cases. Is it the hon. Member's intention that the definition of Customs should go ?

Pandit Thakur Das Bhargava: The definition of the word "custom" will govern the word wherever it appears in the subsequent clauses. That word will have the meaning which we assign here.

Therefore it is very necessary to understand the significance of the word "custom" and see how it affects our principles. For us to know the full meaning of the word it is neccessary that we realise how we are altering the entire provisions of the Code, when we define "customs" in the manner proposed.

Mr. Deputy Speaker : The hon. Member is sufficiently an elderly Parliamentarian to know things but I want to understand things for myself. When individual items such as marriage or divorce come up we shall see what further changes have to be made in respect of that particular portion. We might say "Notwithstanding this, this shall not be allowed, etc." We are now on the definition and let us not enlarge the scope and discuss every one of the entries and see how such and such custom will work hardship. That would mean another general discussion.

Pandit Thakur Das Bhargava : I understood you Sir, even without the exposition which you have been kind enough to make. I quite see the force of the point you have made. You are here only defining customs but whatever definition is given here will apply to all those customs which are allowed in respect to certain matters.

Mr. Deputy Speaker : Not necessarily. With regard to the Sikhs or some others we might say "Notwithstading, this custom shall not prevail".

Pandit Thakur Das Bhargava : What is the meaning of our saying that customs in regard to the incidents of marriage will prevail ? It means that a certain kind of rule shall prevail and that rule or principle we are defining here, whether it should be such as is opposed to public policy but all the same one which has got the force of law.

Mr. Deputy Speaker : As to how custom ought to be recognised, if hon. Members want to impose restrictions it is certainly within the scope without going into the details of the various customs prevailing.

Pandit Thakur Das Bhargava : I am not on details at the moment. When the occasion arises we shall see whether the custom should be allowed to prevail in respect to those matters. Here I am making only general observations and submitting to Dr. Ambedkar…..

Mr. Deputy Speaker : The general observation that there shall be no customs and so forth could come at the first and second stage.

Pandit Thakur Das Bhargava: I am not saying that no custom should be allowed. I am only saying that he should not be very liberal

and allow many kinds of customs which will take away from the effect of the Bill. Then it would mean that there would be no use having this Code if in respect of every matter you allow a custom to prevail.

Mr. Deputy Speaker : We are once again going into the details. It is one thing to say that hereafter no custom at all will prevail, only the law will prevail. But it is another thing to say that we have to allow certain customs. In that case when we go into the details we will find out what ought to be allowed and what customs ought not to be allowed.

Pandit Thakur Das Bhargava: I am restricting the scope of customs by this definition. Supposing only those customs as have been judicially recognised are to be allowed, that would certianly restrict the scope of custom. Otherwise if we leave custom undefined when a man is faced with difficulty and produce any amount of evidence ; custom can be proved not only by instances but by opinions, by reference to texts. Therefore, I want that so far as custom is concerned its scope may be restricted. It is not that I have only taken one case and put it for the consideration of Dr. Ambedkar. I have gone further and just to show the absurdity of how he is allowing so much liberalisation of customs, I have given certain amendments to show to him and to impress upon him that he should proceed cautiously. Therefore, my amendment No. 446 says:

> "or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family".

I can understand that there are some customs which are growing, some which have been crystallised. As regards those which are growing, we want that they may not grow because that is the only way of having a statutory rule effective. In regard to customs which have not been judicially recognised, my own view is that we should not bring them within the scope. Either we accept that the society should accept custom as the sole rule of conduct and there should be no other rule among the Hindu community as was the case before—in that case also we will reach a stage when custom will become so stereotyped that we will attain what we want to—or, in the other case when we want to impose the rule of thumb, when we want to lay down by statute that such-and-such shall be the rule. Anyhow we will be well advised if we recognise customs which have been judicially recognised. In the definition given, it would appear there is no mention of any judicial recognition of any customs. On the contrary, the words in the first proviso are :

"that the rule is certain and not unreasonable or opposed to public policy".

I am opposed to the wording, "opposed to public policy". I do not know what the "public policy" is. So far as monogamy is concerned, I understand the public policy to be that the Government seems to be of the view the monogamy is a good thing for Hindus but then for rest of the community it does not apply ; as regards my Mussalman friends, many of whom I know do not like polygamy still the government is undecided and has taken shelter under the specious plea that they have not been consulted. If a thing is opposed to public policy, it is so for all. I know of a custom in the Punjab where *kharva* marriages are allowed. They cannot be called absolutely bigamous, but at the same time they are a different edition of bigamy because after the man dies the *devar* of the woman, that is the younger brother of the deceased husband, though his spouse may be living, is allowed to marry that widow ; the property remains with the family, and the lady also remains with the family. So, opposed to public policy might mean anything. It is so flexible a term that it shall vary with the length of the foot of the Law Minister, I am therefore opposed to these words. I would rather like mat any custom which has been judicially recognised, which has stood the test of time should be recognised.

Mr. Deputy Speaker: Hereafter there will not be any custom.

Pandit Thakur Das Bhargava : My submission is that in regard to this matter in which the Hindu Code seeks to provide, there should be no custom ; otherwise the whole purpose of the Code will disappear. You are perfectly right, Sir, when you say that in future there will be no custom on matters on which the Hindu Code provides, but in regard to other matters, so far as the Hindu Code does not relate to those matters at all .....

Mr. Deputy Speaker: What will happen if there is a particular custom which is undisputed ? It need not come to court. Only a disputed custom comes to court and is recognised or not. Any custom which is not obnoxious to public policy is recognised by the community. Merely on account of not having been recognised by a court does it lose its stand ?

Pandit Thakur Das Bhargava: My submission is that if there is provision for it in the Code then it does not grow. If there is no provision then it will remain and grow, and even if you took away these words "opposed to public policy" still it will remain because it is a rule of law. If you put the words "opposed to public policy"

then, in spite of the fact that a custom is a good one and observed by great numbers in the community, it will not grow if somebody is able to say that it is opposed to public policy.

Mr. Deputy Speaker : The Hon. Member is a good lawyer. My own interpretation is different. Wherever this Code specifically provides for a particular thing, unless an exception is made, to that extent a custom is abrogated whether it be opposed to public policy or not. What is the difficulty under which the hon. Member is labouring ? There are certain customs which have to be recognised, certain customs which are obnoxious and so opposed to public policy. Public policy is only a matter which can be judged by the foot of the judge. In regard to those matters we can say, why leave them to the court to decide; those customs are absolutely obnoxious. But with regard to other customs why say that they ought to be recognised by a court ? I think it is impossible to legislate for all the things.

Dr. Ambedkar : Perhaps you will allow me to intervene for a minute or two to clarify the point.

Pandit Thakur Das Bhargava : I am, Sir, of the same view as was expressed by you, but I am expressing it in a different way. I do not want to tamper with the customs which are growing which are good customs, but my fear is that any court may take upon itself to say that it is opposed to public policy. All the customs are not treated here because we have not the time and energy to go into all the customs throughout the country. Because we cannot say what customs will be saved, we should say that a custom to be recognised shall have to be judicially recognised as not opposed to public policy.

Dr. Ambedkar : The question which has been raised by my friend Pandit Bhargava is no doubt very important and so far as I know there is not the slightest difference between the view that I take and the view that he takes. The only thing is that he has applied his mind, if I may say so, to a wrong clause and that is why he has been rather confused as to what exactly is the position. Those Members of the House who are interested in the subject of custom *versus* the Code had better begin to apply their mind not to clause 3 but to clause 4 which is the main clause which deals with this matter of authority of custom as against the authority of the code and the law. And you will find, Sir, a very clear statement therein that unless a custom has been expressly saved that custom will not have any operation as against this law. Therefore, the question whether any particular custom has been expressly saved or not has to be gone into when we come

to discuss each of the clauses of this particular Bill whereon Members may raise the question whether the particular clause should stand in the absolute way in which it has been drafted or whether it should be made subject to any particular custom. If any particular clause in this Bill does not say "Save as otherwise provided by custom" or "unless there is a custom to the contrary" there is no custom which this Bill proposes to recognise. Therefore, on that point there ought to be no doubt. There is not the slightest intention to allow custom to override in a general way the provisions of this Code.

My. hon. Firend has, I know, a particular question or an occasion in mind when he feels that I have been going rather soft on this particular subject, but I can tell him that it is only in very very rare cases that I propose to yield on this subject, subject to the fact that anyone who presses upon me that the custom should override this particular Code in any particular way will carry upon him the burden of showing that that custom is more progressive than the provisons of this particular Bill.

Now, supposing that we do introduce a qualifying statement when we come to deal with different subjects, i.e. we say that that clause shall be subject to any existing custom or something like that, even then the question remains : What is the standard to which that particular custom must conform before it can have that over-riding effect ? It is that question which is dealt with in the definition clause, so that whenever any custom is saved it will nonetheless be open to find out whether the custom which is allowed by the particular clause to prevail upon a provision of this Bill conforms to the definition which is really a definition laying down the standard to which a custom must reach before it can be accepted by the court. That is the position.

So far as (ii) of clause 3 is concerned, there is nothing in this clause which is not bodily taken from the judicial pronouncements of the different High Courts in our country which have had to consider what is the custom to which they will give their sanction, and I think the ingredients of custom which the courts have laid down have been bodily and literally embodied in (ii) of clause 3. So, I do not think there is any ground for quarelling with the definition, because the definition is necessary. Even where we allow custom to prevail, we do not allow any kind of custom to prevail but only custom which conforms to the standards which have been laid down by the High Courts and hon. Members will see that the standards laid down in (ii) are the standards which have been sanctified and laid down by the various courts in our country.

Shri Naziruddin Ahmad : Even in foreign courts this is so.

Dr. Ambedkar : Everywhere this is the same. I have looked up even Stephen's Digest of English law and I find that the wording is almost the same as we have got here.

Pandit Thakur Das Bhargava : I am very much oblidged to my Hon. Friend the Law Minister for his having kindly explained.

Shri J. R. Kapoor : (Uttar Pradesh) **:** Has the hon. Member not finished ?

Mr. Deputy Speaker : No. He will continue. He is on his legs. Incidentally not only Members of Parliament but also outsiders are watching the progress of this Bill and there is some misunderstanding about my position. Once I sit here I have absolutely no colour, no caste, no creed. That is my honest position. To the best of my conscience I have tried to discharge my duties impartially. If any hon. Member feels rightly or wrongly that I am not doing it properly, I always welcome his coming and telling me privately that I must do this and that.

I find that even hon. Members of this House are under the impression that when an hon. Member is on his legs I can ask him to sit down. I have been appealing to hon. Members that with respect to important matters, certainly sufficient lattitude and time is necessary and must be allowed but if they repeat matters which have been discussed at various stages that is not right. Barring that, I am not in a position to impose any time restriction. If the Hon. Minister of Law can tell me that I can impose any time restriction on speeches under the law, it will be only too glad to avail of it.

Dr. Ambedkar : It cannot be done. But we have agreed amongst ourselves to impose a self-abnegation ordinance.

Mr. Deputy Speaker : I am very glad of that, but the burden should not be cast on the Chair. In a Finance Bill, I can apply the guillotine. This has been newly introduced. Hitherto the guillotine was applied to only Budget Grants, but recently it has been introuced so far as Finance Bills are concerned. I can fix a time limit and all amendments will be lost unless they are moved and accepted or rejected before that time-limit. But with respect to other Bills, I have no right to fix a time-limit even with respect to the Bill as a whole. With this restriction, I feel very much embarrassed if any hon. Member thinks that I am allowing too much time. That is my position and the position of anybody who may be in the Chair.

Lastly, if any hon. Member feels that there has been sufficient discussion on a particular clause, he can kindly tell me. There of course, I have my discretion. If I too feel that the matter has been elaborately discussed or at any rate sufficiently discussed, I will agree to the closure motion. To that extent, there is discretion in me. hon. Members who make suggestions will kindly bear all these things in mind. I am making this statement because an impression is created out-side that notwithstanding the suggestions of hon. Members I am standing in the way and holding the pendulum back.

In this connection, may I also inform the House that I have received a letter from the Managing Editor of the *Indian News Chronicle* ? Yesterday, as the House will recall Shri Amolak Chand drew my attention to a cartoon appearing in this paper which described some Members as holding the minute hand and hour hand and withholding the progress of the clock, and the Deputy Speaker as catching hold of the pendulum firmly so that the clock cannot move this side or that side. The hon. Members are shown as looking up and not looking down and seeing as to who is the man that is really holding the clock back. That is the impression that was created by that cartoon. Since I made reference to this matter yesterday and it is practically a privilege of the House and I am only its spokesman, I would like to read this letter. It is written by Shri Deshbandhu Gupta, Managing Editor and runs thus :

"My dear Shri Ananthasayanam Ayyangar.

I am informed that you took exception to the cartoon which appeared in the Indian News Chronicle yesterday morning under the caption "putting the Clock Back". You are reported to have expressed the view that the cartoon was calculated to cast aspertions on the Chair. I am very sorry that the cartoon has given cause for offence to you personally or in the capacity of the Deputy Speaker. The cartoonist assures me that it was remotest from his intention to show any disrespect to the Chair or to the House and joins me in assuring you of the desire of the Indian News Chronicle to uphold the dignity of both.

The theme of the cartoon as you will kindly see is to illustrate the current situation in Parliament in which in spite of the Chairman's desire to regulate the debate so as to conform as nearly as possible to time schedule, some members participating in the debates have endeavoured to prolong the debate and thereby hold the progress of the Bill. I am assured by the cartoonist that in introducing the Deputy

Speaker in the cartoon in this role he had no other intention. While regretting that anything in the cartoon should have given cause to you for offence. I hope you will be good enough to accept this explanation and our sincere assurance that there was no intention whatsoever of showing disrespect to the Chair and the House."

I think this is sufficient.

Dr. Deshmukh : From the Chair, he has shifted to Members. He is accusing Members now. It is worse.

Shri Radhelal Vyas : (Madhya Bharat) : I think the matter should be referred to a Committee of Privileges.

Shri Bhatt : It should be made clear that it was not intended to cast aspersion on any Member either.

Dr. Deshmukh : Shri Deshbandhu Gupta should be made to appologise to the House.

Mr. Deputy Speaker : Evidently he feels that the speed which he expects of the progress of the Bill has not been made in this case. I shall later look into the matter as to whether any aspersion or insinuation has been cast on any hon. Members of this House.

Pandit Thakur Das Bhargava : So far as your observations are concerned, with your permission I would like to say a word. The Members of this House realise that the Chair is sacred. Here sat Vithalbhai Patel—whose portrait we see before us—who sanctified the Chair. After him was it adorned by men of great eminence and prominence. We all know that the Chair has been holding the scales even. It is idle for the outside world or any members here to think or feel that the Chair is not impartial or dealing fairly with any question.

But at the same time when passions are frayed, when persons take sides, they are apt to see from an unbalanced standpoint the conduct of the Chair or of the Members of this House. Now great exception was taken by some Members, and they even asked you to stop a Member during the course of his speech. I can fully understand the view-point of every Member who wants to make a long speech. Even Dr. Ambedkar made certain statements to which certain Members took exception, though I was not one of them. Every Member has a right to criticise. So far as we are concerned our skins are too thick now to get offended by such criticism. So far as the conduct of the Chair in this House is concerned, no member has for a moment even thought that it is conducting the business in a partial manner.

The newpapers have a right to criticise anybody and everybody. I personally would not mind if any pressman criticises me. Let them criticise—they have their own point of view. Let us not be so thin-skinned,

So far as aspersions on the Chair are concerned, by any person either inside or outside the House, I would take strong exception and if you feel that the apology offered is not satisfactory, you should take action against the person concerned.

Mr. Deputy Speaker : So far as I am concerned, I am satisfied with what he has written. It is, therefore, unnecessary to pursue the matter. If, however, any hon. Member feels that this letter casts any aspersion on him, we shall look into it. At present I do not think any aspersion is cast on any hon. Member or on the House.

Shri Santhanam : Is it suggested that only Government is liable to criticism and not the Members ?

Dr. Deshmukh : While Mr. Gupta wrote the letter with the intention of clarifying his position so far as the cartoon was concerned, he has unnecessarily gone out of his way to criticise a section of the Members by alleging that they were obstructing this measure.

Mr. Deputy Speaker : This letter consists of two parts. So far as the Chair is concerned and the privilege of the House is concerned, the matter may be left to me. I am satisfied with what he has written. If, however, any hon. Member feels that it casts any aspersion on him, he may meet me in my chamber and we shall discuss the matter.

Pandit Thakur Das Bhargava : What objection could be taken to that ? Mr. Deshbandhu himself took four hours on the Press Bill; our friend Mr. Naziruddin Ahmad took seven hours on this Bill.

Dr. Deshmukh : It is a case of the pot calling the kettle black.

In regard to what you said about yourself and the conduct of business in the House. I want to say a word with your permission and that is this. Whereas I sincerely welcome all your interruptions and the help you give for the conduct of the business of the House, I would like to point out with all due respect, that if the debate is allowed to go on, probably we might spend lesser time. I have the utmost respect for the Chair and it intervenes only with the idea of helping the proceedings. But if it could be minimised and help given only when it is necessary, we will probably be able to advance better.

Shri Bharati (Madras) **:** It is a direction to the Chair which is uncalled for.

Dr. Deshmukh : The Chair has invited our opinion.

Shri Bharati : Not for giving directions to the Chair.

Pandit Thakur Das Bhargava : As a Member of this House I wish that this rule of free speech is stuck to. I do not want to put any obstacles in the progress of this Bill. All the same I feel very much offended if I feel an inner urge to speak more and more and yet the Chair pulls me up and does not allow me to speak fully. All Members are expected to put a self-restraint on themselves. Now, I come to the subject.

I am very much indebted to Dr. Ambedkar for having very kindly explained this point of law. I quite see that custom has been defined in many judicial pronouncements. But that was not my point. I wanted to suggest that one of the accepted canons for the validity of custom should be that it should be judicially recognised. I suggest this fact that customs have been judicially recognised may not be given a goby when custom is opposed to public policy. If a custom has been judicially recognised, it means that it has passed through the seam of courts and has received recognition at the hands of the judiciary.

Dr. Ambedkar : If I may intervene for a moment, that question will again arise, or may arise, or may be raised, when we are dealing with each particular clause. My hon. Friend suggested "any custom which is judicially recognised" ! It is perfectly open to him to say so. But as you very rightly observed, if we are to confine our recognition to a judicially recognised custom, it will create many dafficulties, because there are good customs which satisfy all the ingredients of the definition, yet have not come to the court for judicial recognition. I am only anticipating the difficulties.

Shri Santhanam : The word 'judicially recognised' may mean, recognition by a district court, or a High Court. We cannot say judicially recognised means recognised by the Supreme Court.

Pandit Thakur Das Bhargava : It must be judicially recognised and further it must be certain. It must be not unreasonable, it must be continuous and it must have the force of law. I only want custom which has been judicially recognised should not be given a go-by in the name of public policy. Therefore all these ingredients of a valid custom which are defined by the judicial courts may be accepted.

Mr. Deputy Speaker: The proviso requires that "the rule is certain".

Pandit Thakur Das Bhargava : It must be certain, not unreasonable and have the force of law, But the words "and uniformity" and "or opposed to public policy" may not be there. This is the difference I want to see carried out.

Mr. Deputy Speaker : Where a single custom applies to all classes of human beings, then it is only by nature.....

Pandit Thakur Das Bhargava : I beg to be excused. When it is said that a custom should apply to all human beings it must be almost a universal rule or law. It applies to a tribe, community, group or family, as has been defined here. If you say "uniformity" this would mean that the custom that applies to any family or caste or community or tribe will all go away. When the word "continuously" is there and when the word "law" is there I do not understand the necessity for the word "uniformity".

Mr. Deputy Speaker : I understand "uniformity" to mean without variation.

Dr. Ambedkar : That is the point. I was almost going to say that.

Pandit Thakur Das Bhargava : There are different customs between different families. How can they be uniform ?

Mr. Deputy Speaker : The hon. Member has not appreciated the point. We shall assume that there is a custom and it has been continuous, but it has been followed with variations. Suppose somebody is collecting Rs. 10 in a certain period and it was Rs. 15 in the next period and Rs. 20 in a third period, is it suggested that the application should be not only with respect to custom but to laws and grants also ? Suppose it is held by judicial decisions that this was not uniform. Therefore, you cannot presume. Similarly, uniformity means not uniformity with respect to the caste or family etc. but in the family itself it must have been not only continuous but uniform also, that is without variation.

Dr. Ambedkar : That is what it means—without variation.

Pandit Thakur Das Bhargava : As if the changed custom will not be recognized by law, If there is a custom which has gone out of use.....

Mr. Deputy Speaker : Wherever there is a change, that change must have been so continuous, so long and so certain ,..

Pandit Thakur Das Bhargava : The word "continuous" is there and I do not object to it. I object to the word "uniformity".

Mr. Deputy Speaker : Has Mr. Naziruddin Ahmad got any substantial amendment ? I do not think so.

Shri Naziruddin Ahmad : I want to speak on 'custom'.

Mr. Deputy Speaker : First I will deal with those who have got amendments. Does Mr. Jhunjhunwala want to speak on his amendment ? I am not inviting him to do so !

Shri Jhunjhunwala : Yes, Sir, I want to speak on it.

In my amendment I want to add the word "*varna*" after "tribe".

Mr. Deputy Speaker : He wants caste custom also to be recognised there. He wants to introduce among the various categories "caste" also, after the word "tribe". He has already tabled an amendment to that effect. Now he wants to change the nomenclature of the word from "caste" to "*varna*".

Shri Jhunjhunwala : I want that the word "*varna*" should occur after the word "tribe" in clause 3(i). The object of my putting in this amendment is that while customs and usages will be recognised according to the area, tribe, community, group or family, the reasons for recognising such usages and customs have not been explained by the Honourable Doctor. But if the principle is accepted that certain customs and usages will be recognised, if as he has said these are proved to be progressive, in that case the customs which are prevalent in different *varnas* according to *Varnashrama Dharma* should be recognised if the conditions laid down by the Hon. Doctor are satisfied.

This *Varnashrama Dharma* is of no recent origin. People say that it is only in the puranic time that these *varnas,* castes and all these things have come into existence. But that is not a fact. These things were in existence long before, say 3,000 years back. They have got a great deal to do with our life and social structure as well as our economic structure. All the four *varnas* have got different usages and different customs, and they have meaning behind them. Every usage and custom has got meaning behind it, and duties are allotted to different *varnas* according to their ability. The other day when a question was put to him whether he has got the sacred thread, the Hon. Mr. Gadgil said, "Yes, I had a sacred thread", then he took off his coat and said, "See, I have taken it away".

Mr. Deputy Speaker : He did not take off his coat.

Shri Jhunjhunwala : I stand corrected. He did not take off his whole coat and the reason which he gave, to which I attach importance, was that he is not capable of following the *Dharma* of a Brahmin for which the sacred thread is worn, and he said, "Therefore, as an honest man I thought it my duty to throw it away". Sir, this shows that even the hon. Mr. Gadgil recognizes that there is something very great and sanctifying in the usage and of putting on the sacred thread before a Brahmin is married. In the same way there are similar customs in other *varnas* also. Therefore, it is very necessary that all the customs

which are prevalent in different *varnas* should be recognised if they satisfy the conditions laid down by the Hon. the Law Minister. I have therefore put in this amendment only with this object that if any such clauses come subsequently regarding marriage, divorce or any other thing, we may be in a position to show that these customs, though they may not be prevalent in any tribe or community or group of family, are prevalent in differently *varnas* and these are very essential. These are the reasons for which I want to add the word "*varnas*" there.

Shri B. K. P. Sinha (Bihar) **:** May I know one thing from the hon. Member ? Is it his contention that while abrogating the *smritis* and *shrutis* we should not abrogate custom and usage ?

Mr. Deputy Speaker : *Shrutis* and *smritis* have not been abrogated; they have been incorporated.

Shri Jhunjhunwala : He will find that the Law Minister recognizes them.

Shri Syamnandan Sahaya : My amendment, as you will see suggests the omission of the two provisions in the sub-clause or item dealing with the expression 'custom and usage'. The purpose of suggesting this amendment is exactly what has been mentioned by the Hon. Law Minister. The Hon. Law minister has said that the definition given here is more or less based on judicial findings on the point and judicial decisions have all been that the words 'customs and usage' should signify what he has laid down in the definition. The words 'custom and usage' must have been and have been the subject of various judicial findings and I therefore thought that if that is the legal or judicial meaning which has been given to the words 'custom and usage', it would not be desirable to encumber or burden this definition by making the provisions here, because that is exactly what they will mean. The reason for my making the submission is .....

Mr. Deputy Speaker : I can understand. When there is no definition at all he can rely upon judicial decisions.

Dr. Ambedkar : The court will also be open .....

Mr. Deputy Speaker : Custom is continuous and uniform.

Shri Syamnandan Sahaya : When a certain word is used in a legislation which has been the subject of judicial interpretation, then that word whenever submitted to judicial interpretation will be liable

to the interpretation that judicial decisions have given on it. On the other hand my feeling is that this law makes such revolutionary changes that the normal course of the manner in which the Hindu law has been interpreted will also undergo unthought of changes and my submission is that with the existence of the provisos, the judiciary may feel that the interpretations and rulings have to be considered afresh and the words 'custom and usage' may now have to be dealt with not only, for instance, on the ground that it has been continuous, that the rule is certain and not unreasonable or been opposed to public policy. You will see the difficulty, Sir, in this as you know that 'public policy' is a matter which is an ever-changing process.

Mr. Deputy Speaker : Nobody denies that. What is the public policy under particular circumstances is the matter that will be decided. . . .

Shri Syamnandan Sahaya : Not only under particular circumstances but in the changing conditions of Government. One Government may have one public policy and another Government tomorrow may have another public policy.

Dr. Ambedkar : The word 'public policy' also occurs in the Law of Contracts.

Mr. Deputy Speaker : Under the Transfer of Property Act, no transfer is valid which is opposed to 'public policy'.

Shri Syamnandan Sahaya : I also support the amendment of Pandit Thakur Das Bhargava with regard to the word 'uniform'. The words 'custom and usage' in my opinion are liable to lead to difficulties and also further litigation. It is not necessary that a certain rule or usage or custom should have been uniformly followed in a particular family and I shall refer to a Privy Council Case, if the Hon. Law Minister will have no objection. I refer to a very important case which was taken to the Privy Council by the successors of the Moghul Emperors. Now the case was as to who was to be the recipient of the pension paid by the Government of India to the successors of the Moghul Emperors and several people were disputing rights. One said, "I am the successor of the Moghul Emperor" and another said, "I am the successor". The matter went up to the Privy Council and the point arose as to which of them was circumcized, because one of them was not .....

Dr. Ambedkar : I know that case.

Shri Syamnandan Sahaya : And the Privy Council held in this particular case that although normally the rule and custom of circumcision obtained in the Muslim families, in the case of the Moghul

Emperors, when there was a child from the Hindu wife, circumcision was not necessary and they were entitled to the pension or something like that. Therefore the Hon. Law Minister will appreciate that this uniformity with regard to customs even in a particular family has not been a necessary factor and I think that he will do well to adopt this amendment of Pandit Thakur Das Bhargava, suggesting that the word 'uniformity' be dropped.

Dr. Ambedkar : This has no judicial value. The distinction there was made between custom and practice. Practice has no judicial value.

Shri Naziruddin Ahmad : I want to speak with regard to the definition of the word 'custom' to begin with and I must say that I am in entire agreement with the official draftsman.

Shri Syamnandan Sahaya : For once.

Shri Naziruddin Ahmad : I am in general agreement with the Hon. Minister except on occasions when he cannot be made reasonable. With regard to this definition of the word 'custom' it is not merely the Indian law but it is also the law throughout the world. I have a copy of Holland's Jurisprudence which also lays down that a custom in order to be followed must be reasonable, must be continuous, must not be broken and it must be of ancient standing. This is all that is laid down there. The question of uniformity is regarded in Jurisprudence as absolutely essential. If once a custom is broken, it ceases to bear the character of custom at all. This has always been regarded so. So the mere fact that a custom is broken is enough to break the custom. Therefore, I think the definition as it stands should be supported. So far as judicial decision is concerned, the judicial decisions in all cases must have been or are supposed to have been given in view of these considerations but these are considerations which are essential, which are to be found in books of Jurisprudence and therefore, it is far better to rely upon these essential elements rather than rely upon judicial definitions because judicial definitions might be coloured with regard to the difficulties of a particular case and it is far better to rely upon well-known expressions rather than rely upon judicial decisions. Therefore, I think that the definition in the Bill should remain.

Shri J. R. Kapoor : I have not been able to appreciate the necessity of the two amendments that have been moved by my hon. Friend, Pandit Thakur Das Bhargava, particularly in view of his own view. His view I understand, is that the definition of 'custom' should be

a restricted one and that various sorts of customs in various parts of the country in different forms, in different methods should not be allowed to prevail. That being his view, with which I am in entire agreement, I think that if the amendments suggested by Pandit Thakur Das Bhargava are accepted, the scope, the denotation of the word 'custom' would be considerably extended and expanded which should not be. The one useful thing about this Bill is that it is going to unify and consolidate the Hindu society in some measure and therefore the less the variations in manners and customs and in the rules applicable to Hindu society, the better it is. The essential basis of this Code is uniformity which it will bring about and we should not get away from that mooring and in the consideration of every clause in this Bill, we should never lose sight of this thing. Once we lose sight of this thing. Once we lose sight of that we shall be virtually giving away the basis of this new enactment. What does Pandit Thakur Das Bhargava suggest? Firstly, he suggests that the word 'uniformly' should be done away with. That would mean that a custom even if it has not been uniformly observed should be a custom under this definition, Obviously, that extends the scope of the definition of custom. Secondly, he suggests that the words 'opposed to public policy' should be deleted. That, again, means that a custom even though it may be opposed to public policy, according to the prevalent notions of public policy at any particular time, should have the sanctity of a custom as defined here. That, again, would be extending the scope of custom and not restricting it. I submit these suggestions should not be accepted. To me, it appears that the words 'opposed to public policy' are very necessary and essential. Because, our society, or any society is an ever-growing society and notions about morality, propriety and advisability of a thing change from time to time. We should not put a stop to that desirable change. A custom which has even been judicially recognised at any particular time, may, 10 or 20 years thereafter appear to the society to be not a proper or desirable custom. At that time, it should be open to society and even to the law courts to declare that this custom, though it has had recognition in judicial pronouncements, according to the changed conditions of society and the changed economic and social theories which have been adopted by society, should not be recognised as a valid custom. I therefore submit that this part, as it stands, should be accepted.

11-00 A M

I submit the amendment suggested by my hon. Friend Mr. Jhunjhunwala may be accepted because that appears to be a harmless thing. I beg to suggest, Sir, at this stage, if it may not be considered

a late stage, to the Hon. Law Minister that the words 'or family' in the, substantive clause may be deleted. Because, to me, it appears .....

Mr. Deputy Speaker : Where is the amendment ?

Shri J. R. Kapoor : ..... that a custom which has been in force only in a particular family should not be given the sanctity of a valid and recognised custom.

Dr. Deshmukh : It has already been given by the Hindu Law.

Shri J. R. Kapoor : We have in the sub-clause the words :

> "signifies a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family."

Mr. Deputy Speaker : The House is aware of that expression. The hon. Member has tabled a number of amendments, he never thought at any particular stage that these words should be dropped. I do not want ot allow any time to be spent on this matter.

Shri J. R. Kapoor : I am not moving any amendment. I am opposing this particular part of the clause. I do not think I will have any further opportunity to suggest this. As for my not moving an amendment. I may be permitted to confess that having been very much disappointed in finding that none of my amendments are acceptable to the Hon. Law Minister, I thought, rather than moving an amendment formally, I may informally suggest the thing to him so that he may himself move an amendment to that effect. In that case, it would be more easily acceptable to the House. Anyway, I have nothing further to submit on this point.

Shri Shiv Charan Lal (Uttar Pradesh) **:** I think all the amendments should be negatived and the clause as it is should be accepted. Pandit Thakur Das Bhargava, being a lawyer—I am surprised to see—says that the words 'opposed to public policy' should be deleted. That is a very necessary thing . As society advances, the opinion of society carries more weight. Anything that is against that opinion should not be acceptable even though it may be an old custom. Pandit Thakur Das Bhargava also wants that the word 'uniformly' should be deleted. By the word 'uniformly' he seems to understand uniformly for all the people. It is not so. It may be the custom of one family. By 'uniformly', it is meant that it is followed continuously or uniformly and not changed. Therefore, the word 'uniformly' is also necessary.

He says that only those customs for which there are judicial pronouncements should be accepted. This is also wrong. There are

certain judicial pronouncements which are now not good law because public opinion has changed. The people do not want that custom to continue. There are certain customs which are very well-recognised, but which have never gone to the courts and on which there are no judicial pronouncements. Therefore, I submit, all the amendments of Pandit Thakur Das Bhargava do not stand anywhere.

In the amendment of Mr. Jhunjhunwala, he wants to add the word *varna*. There are no customs connected with any *varna*. All customs are connected with caste, families, certain areas. I do not know of any custom or any decision of any court where a custom has been recognised as a custom of a *varna*. That has never come before any court. As to the amendment of Mr. Syamnandan Sahaya, he wants to delete the two provisos. These provisos are the life and soul of the whole definition. Therefore, they cannot be deleted. Therefore, Sir, I am in support of clause (i) as it is.

Shri B. K. P. Sinha : I think there is no force in the amendments moved to this clause. This clause, as put in by the Hon. Law Minister is simple and embodies the law as it is. The critics have objected to the words "uniformity" and "public policy". But, it has been laid down by so many decisions and judgements of the various High Courts that a custom to be valid must be uniformly practised. Mr. Syamnandan Sahaya referred to some Privy Council Case in support. This contention that uniformity was not an essential of valid custom. I could not catch him; therefore, I speak subject to correction. There is a distinction between social and religious customs and customs that prevail in the agriculture and trade field. So far as society and religion are concerned, custom and usage are rather inter-changeable terms and there is very little distinction between the two. But, in the case of trade and agriculture, a distinction has been made between custom and usage. Custom is noted for its antiquity; it must come down from time immemorial. Usage is something which is in the process of growth ; it is something new. The Privy Council case of which I know, makes a distinction only so far as trade and agriculture are concerned. But, that is not germane or very relevant to this question, which is a social and semi-religious question. I have found in so many decisions uniformity is prescribed as a test of the validity of a custom. As regards public policy, I do not know why people have fears on this ground because I find that it has been laid down by the Privy Council, by the Patna, Calcutta and several other High Courts that a custom which

is opposed to public policy shall not be valid. In this respect also, I find that the Hon. Law Minister has, in his clause, embodied the law as it is. Moreover, it we go on making an exception in favour of all sorts of customs, what would be the basis and justification for this codification. Codification is mainly done to introduce uniformity and certainty. If we make exceptions in favour of customs prevailing in families, in different territories, etc., there would be no uniform law for the whole country, and the whole object of codification would be defeated. The second object of codification is that there will be something handy to which everybody can refer, with certainty. If we make exceptions in favour of customs, etc., this certainity would have gone. Therefore from any point of view, I see no reason why this clause should not be passed as it is, and why any amendment should be accepted.

Mr. Deputy Speaker : I will now call upon the Hon. Law Minister.

Babu Ramnarayan Singh (Bihar) **:** Sir, I have also to say something.

Mr. Deputy Speaker : But has not enough been said already ?

***Shri Bhatt :** (English translation of the Hindi Speech). I have got an amendment.

Mr. Deputy Speaker : Which is your amendment ? I have disallowed it.

Shri Bhatt : You have allowed it.

Mr. Deputy Speaker : But there is no particular charm about it. It is only a matter of recasting the word slightly.

Shri Bhatt : That I am to explain as to why I was putting it. I am not moving it simply for recasting of the words.

Babu Ramnarayan Singh : I kept standing for long.

Mr. Deputy Speaker : What should I do ?

Shri V. J. Gupta (Madras) **:** Sir, I do not want to make a speech, but I want to get a doubt cleared.

Babu Ramnarayan Singh : Your eye should have caught me.

Mr. Deputy Speaker : It does not mean that just because an hon. Member stands a number of times he catches my eye. I must have some discretion in regulating the debate, and I might call upon certain Members and not certain others. But if there is yet time, we shall see.

* P.D., Vol. XV, Part II, 21st September 1951, pp. 3014-54.

Dr. Ambedkar : There is only one point to be explained and .....

Shri Bhatt : You have given me time.

Mr. Deputy Speaker : All right. I will call the Law Minister later. But after all it is a very formal and verbal matter that is dealt with in this amendment.

Babu Ramnarayan Singh : No, Sir, it is important too.

Shri Bhatt : The amendment moved by me is not verbal. The thing which I want to stress in it may possibly not be acceptable to the Hon. Minister and he may not be inclined to change his attitude. As a matter of fact, as a Lawyer I am not so competent as to convince him. But I want to tell him and draw his attention to certain things lacking in the measure that is being sponsored by him.

The first point is about the definition of 'custom and usage' which he has put here in an insufficient form. On reconsideration he will himself feel inclined to reduce or add a few words to convey the complete sense.

By 'custom and usage' we mean traditions, conventions and routine practices, The definition being propounded by him for it limits the sense to four essential attributes, *viz*., continuity, uniformity, certainity and its not being opposed to public policy. In its place I am thinking of a simplier definition which may precisely convey the same sense. But he has talked of uniformity. What does this uniformity mean? Different castes have their different customs. Even a single caste, spread roughly over a thousand villages, allows various concessions and different usages to the separate circles, and therefore even in a single caste there is a separate sort of uniformity for separate places. There are variations. Therefore the word uniformity would give rise to a lot of litigation and benefit the lawyers It may therefore be dropped as variation is inevitable.

If a community made certain variations, it being its usage, it was likely to pay a fine of Rs. 50. But now-a-days Rs. 50 mean nothing and cannot have affect to the desired extent and therefore if one suggests to increase the fine to Rs. 100 you would say that uniformity is not there. Today you change a thing which was good till yesterday, then where is uniformity ? Therefore, as regards uniformity we should agree that variations are bound to be.

I shall quote here from Article 13 of the Constitution to explain how the word 'law' has been defined there :

"law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

Here 'territory of India' does not mean that there is going to be only one custom throughout India. There is not going to be any one order or notification applicable throughout India. The Government of India decides its policy for each State according to circumstances prevailing there.

I also want to tell you what is meant by 'law in force', and this will explain what I understand from the words 'variations' and 'uniformity' :

"laws in force' include laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

So, I want to suggest that the word 'uniformity' used here will make complications and nothing will be lost if it is dropped. After all what does this 'custom' mean ? We are educated enough to understand that 'custom' is an usage prevalent from the time of our forefathers. You might quote certain thing prevalent upto yesterday, in which you have made a change today, but, for that reason, shall we not take it as custom and will it not affect us ? It may not affect economists, but it is not proper. Therefore, if you want to bring the word 'custom' and allow some concession according to it, it may be put in a way that people may get something through it.

'Custom' has been defined in the Law Dictionary as follows :

"It must have been continued, peaceable, reasonably certain man runs not to the contrary.

"It must have been continued, peaceable, reasonably certain, compulsory and not left to the option of every person whether he will use it or not, and consistent with other customs, for one custom cannot be said to be in opposition to another."

These things should be taken into consideration. I have suggested that the word "continuous" was equivalent to 'having been in vogue' This is not a wrong word, 'in vogue' being a comprehensive word of the English language meaning a thing prevalent and in practice. That is why I have proposed ; 'having been in vogue for a long time', 'it has been in practice for a long time'.

The second thing which I have put is : 'which has obtained the force of law'. This is a simple thing and if accepted will become a recognised convention.

The third point I have taken is about 'public policy' or 'public morality'. I fail to understand that if conventions find place in the proposed measure, where was the necessity for the word 'public policy' ? You might say that only accepted customs will be allowed at a place and not others, then which customs will be against public policy ? What does 'public policy' mean ? The word might have dropped from some lawyer or judge and we are now using it, but we should be clear about the meaning of 'public policy'. I think there is no necessity for any such expression as 'public policy' or 'public morality'. After all where there will be a place in law for conventions, only there the conventions will be followed. So I do not find any necessity for these words.

Now I want to say something about caste and sub-caste. The words are not my own ; they have been used in Articles 15 and 16 of our Constitution. We used the word 'community' in Clause 2 yesterday. We have not used the word 'community' but the word 'caste' in the Constitution. In my opinion the words 'castes and sub-castes' will be more proper here in place of the word 'community'. I do not mean that the word 'community' may be dropped as we have included it only yesterday, but there is no harm if these two words are also added.

With these words I move my amendment. There is very little likelihood of its being carried, but the Hon. Minister will please think over it.

Babu Ramnarayan Singh : (English translation of the Hindi speech). Sir, I submit that the decision arrived at by you is very nice and acceptable to all. But sometimes you make decisions in such a haste that it pinches us. Therefore, I entreat you not to decide in haste on the ground that there has been sufficient debate upon the measure. I submit that I also stood up so many times, your eye should have caught me and I should also have been allowed to speak.

Shri V. J. Gupta : I have a doubt to be clarified. In the definition it is said :

> "The expressions 'custom' and 'usage' signify a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family."

As you know in our parts marriage between a young man and his maternal uncle's daughter is allowed in many communities. It is a common custom though it is not uniformly or continuously observed.

Mr. Deputy Speaker : You must read the entire chapter. There is a special exception made.

Shri V. J. Gupta : Further, it is said "opposed to public policy". A practice is called a custom when observed by all the people of a locality. When it is observed by all people uniformly how can it be opposed to public policy ?

Dr. Deshmukh : I want to oppose this.

Mr. Deputy Speaker : You can vote against it.

Babu Ramnarayan Singh : We would like to speak also on it.

Mr. Deputy Speaker : I know Hon. Members have a right to speak but I have looked round and I am satisfied that there has been a sufficient debate. If the Hon. Member wants that the formality of a question being put should be observed, let someone move it and I shall put it to the House.

Shri Santhanam : Sir, the question be now put.

Mr. Deputy Speaker : The question is :

"That the question be now put."

The motion was adopted.

Babu Ramnarayan Singh : My voice was louder than their voice !

Dr. Ambedkar : In my previous intervention I had explained already both the position of this sub-clause in relation to clause 4 and how the question of custom has been dealt with generally *vis-a-vis* the Code.

With regard to the exact terms which have been used to define the expression 'custom' I am sorry to say that it is not possible for me to accept any of the amendments suggested. This definition, as I have said, has been copied verbatim from judicial decisions of the highest tribunal in our country as well as in all other countries, where custom has been judicially defined. I do not think therefore that any ground has been made out for me to depart from the definition proposed in the sub-clause.

Mr. Deputy Speaker : The question is :

In clause 3, for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires".

The motion was adopted.

Mr. Deputy Speaker : The question is :

In clause 3, renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv) and (v) and insert the following as item (i), namely :

"(i) 'Aliyasantana law' means the system of law applicable to persons who, if this Code had not been psssed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949)."

The motion was adopted.

Mr. Deputy Speaker : With the re-numbering of the parts as adopted by the previous amendment all the amendments relating to part (i) now relate to the present (ii). I shall put them to the House one by one.

The question is :

In part (i) renumbered as part (ii) of clause 3, for the words "among Hindus" substitute the words "among persons to whom this Code applies".

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) omit the words "and uniformity".

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) of clause 3— (a) after the words "group or family" occurring in line 4, add the following :

"or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family"; and

(b) Omit the first proviso.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) after the word "tribe" insert the word *"Varna"*.

The motion was negatived.

Mr. Deputy Speaker : in view of this amendment No. 413 having been negatived amendment No. 414 does not arise.

The question is :

Omit the provisions to part (i) re-numbered as part (ii) of clause 3.

The motion was negatived.

Mr. Deputy Speaker : The question is :

For part (i) renumbered as part (ii) of clause, substitute the following :

"(ii) the expressions 'custom' and 'usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family :

Provided that the rule is certain and not unreasonable ; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family."

The motion was negatived.

Mr. Deputy Speaker : The question is :

"That part (i) renumbered as part (ii) of clause 3, stand part of the Bill."

The motion was adopted.

Shri Naziruddin Ahmad : I have amendment No 377 to part (ii).

Dr. Ambedkar : I would very much like to make suggestion here because that will shorten the labour. As you will see, some of the definitions given in part (ii) not only apply to marriage and divorce but they also were intended to apply to the other parts of the Code. In view of what has transpired, it would be necessary for me at a subsequent stage to amend this definition and to narrow it down to the provisions relating to marriage and divorce. Therefore, what I was going to suggest to the House is to pass this in a formal manner without attaching any great importance to it, because I shall come back to it when I deal with consequential amendments and then the matter may be dealt with at great length if they want. For the moment I am not very particular about this definition because I see that I will have to amend it.

Mr. Deputy Speaker : Is there any objection to allowing this to stand over this part alone ?

Dr. Ambedkar : I have no objection.

Mr. Deputy Speaker : In view of what has transpired, some consequential amendments have to be made later. So, I will allow this part to stand over.

Shri Santhanam : It will mean the whole clause standing over. But after passing parts (viii) and (ix) the whole clause has to be put.

Mr. Deputy Speaker : It is in the discretion of the Chair to put the whole clause or put it part by part. As a matter of fact, I have placed it part by part and we have already adopted two parts.

Shri Bharati : Definitions may be added at any time.

Mr. Deputy Speaker : If the Bill is going to be restricted in scope then what is the harm in doing so ?

Shri Naziruddin Ahmad : My amendment is for this very purpose, Sir.

Mr. Deputy Speaker : The Hon. Member has thought much in advance and the Hon. Minister is only accepting what he is saying. So, this matter will stand over.

Shri Naziruddin Ahmad : I have no objection.

Shri Bharati : The words "full blood" and "half blood" do not occur in the part of the Code which we intend to pass. Originally we had intended to pass the whole Code and these words were necesary. Now that these words do not occur in this part we may as well drop them.

Dr. Ambedkar : They may arise in connection with prohibited degrees, *sapindaship* and so on. Therefore, my suggestion is that it might be desirable at this stage to pass the part and if at a later stage I find it is necessary to make some amendments I will do so.

Shri Bharati : After all, these are definitions of words which must have a reference to the words occurring in the subsequent chapters. If we do not see these words at all in the chapters on marriage and divorce I do not see any virtue in having the definition.

Shri Naziruddin Ahmad : This part is amended by amendment No. 360 which is the latest version of this part. But even there terms like "uterine blood" appear.

Dr. Ambedkar : My suggestion is that the better thing would be to allow these definitions going through ; if subsequently we find it necessary to change we shall change it, because, as I have already stated, I reserve the right of bringing appropriate amendments in view of what has happened with regard to this Code.

Mr. Deputy Speaker : In any way, without any doubt this is required for the chapters on marriage and divorce. And these terms are there both in the original part and in the amended one.

Now I will put part (iii) to vote.

The question is :

"That part (iii) renumbered as part (iv) of clause 3 stand part of the Bill."

The motion was adopted.

Mr. Deputy Speaker : The question is :

In the explanation to item (iv) re-numbered as (*v*), *for* "this clause" *substitute* "clauses (iv) and (v)".

The motion was adopted.

Mr. Deputy Speaker : The question is :

"That part (iv) renumbered as part (v), as amended, stand part of the Bill."

The motion was adopted.

Mr. Deputy Speaker : The question is :

In clause 3 after part (iv) renumbered as part (v), add the following new part :

"(vi) 'Marumakkattayam law' means the system of law applicable to persons—

(a) who, if this code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act, II of 1100, the Travancore Ezhava Act, III of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, l115, the Cochin Thiyya Act, VIII of 1107, the Cochin Nayar Act of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this Code had not been passed, would have been ogverned by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law ;"

The motion was adopted.

Shri Naziruddin Ahmad : This is subject to reconsideration.

Mr. Deputy Speaker : No. We have passed the Aliyasantana law.

Dr. Ambedkar : The substance may be reconsidered.

Mr. Deputy Speaker : So far as the language is concerned, the Hon. Member is always at liberty to suggest any modifications.

The question is :

In cluase 3, after the definition of "Marumakkattayam law" add the following new part :

"(vii) 'Nambudri law' means the law applicable to persons who, if this code had not been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act

(XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);"

The motion was adopted.

Mr. Deputy Speaker : Now, we come to part (viii)—that is the original part (v). It says ' "Part" means any Part of this Code'— Does he want it to go in ?

Dr. Ambedkar : For the moment, it is very difficult for me to say what I want to amend or excise. I want time to consider. Later on I may change it to 'Bill' or 'Chapter'

Mr. Deputy Speaker : Then I will leave the origin (v) [the present (viii)] to stand over.

Now, I come to definition of "prescribed".

Capt. A. P. Singh (Vindya Pradesh) **:** I want to add the definition of "Kul" in the definition clause.

Mr. Deputy Speaker : Let us finish these first. The question is :

"That part (vi) renumbered as part (ix) of clause 3 stand part of the Bill."

The motion was adpoted.

Shri Bharati : Is it understood that the word 'Code' may be changed ?

Dr. Ambedkar : It will be appropriately changed.

Mr. Deputy Speaker : Part (vi) relating to definition of 'prescribed' as renumbered is accepted. Now, we come to part (vii) relating to definition of 'related'. It is renumbered as (x). The question is :

"That part (vii), renumbered as part (x) of clause 3 stand part of the Bill."

The motion was adopted.

Mr. Deputy Speaker : Now we come to part (vi) of amendment No. 5 by Dr. Ambedkar. It says—in item (viii) as renumbered, for 'any' substitute 'a'.

Dr. Ambedkar : Originally it was 'any part'. I now say 'a part'. But you will remember that you have held over renumbered Part (viii). So, this will also stand over.

Mr. Deputy Speaker : Then we come to the definiton of 'son'— part (viii) of the original clause.

Pandit Thakur Das Bhargava : I have got an amendment here. It is No. 127.

Dr. Ambedkar : It is a kind of power of attorney.

Shri Rajagopalachari : It is a kind of adoption in Punjab.

Sardar Hukam Singh : It is not power of attorney. It is made-easy.

Pandit Thakur Das Bhargava : I beg to move :

For part (viii) renumbered as part (xi) of clause 3, substitute the following :

> "(xi) 'son' includes an appointed heir and an adopted son whether appointed or adopted before or after the commencement of this Code but does not include an illegitimate son."

As the House probably knows, the appointment of an heir is a special custom in Punjab.

Mr. Deputy Speaker : We were considering the definition of 'son'. So far as an heir or a person who is appointed as an heir is concerned, it may be that he may be appointed as an heir for the purpose of the property. In fact, it may be a person who may be fit enough to marry the daughter of the person appointing him as the heir.

Pandit Thakur Das Bhargava : By custom, he is equivalent to a son. Therefore, he cannot marry his own sister. The person who is appointed as heir carries an intimate relationship. He is just like a son for all practical purposes.

Mr. Deputy Speaker : Even to the extent of coming into the prohibited degree ?

Pandit Thakur Das Bhargava : Yes. He comes into that family. There are several customs with regard to appointed heirs in the territory which is now under the Commissionership of Ambala. It is just like adoption. There is absolutely no difference between adoption and the appointment of an heir. The ceremonies even are sometimes the same. The person who is appointed as heir is treated more or less as the son. He cannot marry the daughter of the appointer, because the daughter of the appointer is his sister. No person in Punjab will ever believe that the daughter of the appointing father can possibly be married to that boy. He could not marry even a cousin. He is treated just like a son. The only difference is that, so far as the eligibility of an heir is concerned, he may be a married man with sons and daughters.

Dr. Ambedkar : He can also be a man with *dhadi*.

Shri Rajagopalachari : The hon. Member will perhaps educate us in the matter—is it open, according to that custom to appoint ones own son-in-law as his son ?

Pandit Thakur Das Bhargava : In that case he is called '*ghar-javai*'.

Mr. Deputy Speaker : Corresponding to this there is a custom in the south—it is called 'illatom adoption'.

Pandit Thakur Das Bhargava : This custom is not only judicially recognised ; it is so widely prevalent that it is as good as law. It is a fully establishied custom, it has got more force, perhaps, than the ordinary law of the land. It is universally acknowledged among the Hindus, Sikhs as well as the Muslims. The relationship created thereby is not merely of gift, or mere apointment of an heir. The relationship is personal; the appointed heir is treated as a son and he lives with the father.

Dr. Ambedkar : For property purposes.

Pandit Thakur Das Bhargava : For property purposes as well as for relationship. He cannot marry the daughter, as an outsider does. Therefore it is not a question of merely property ; it is a question of personal relationship.

Mr. Deputy Speaker : Can the son be older than the father ?

Pandit Thakur Das Bhargava : He can be older, just as a nephew can be older than the person adopting. Supposing a brother adopts the son of a brother. The son of a brother may be older to him in age than the person appointing.

Mr. Deputy Speaker : Is there any ceremony attached to it ?

Pandit Thakur Das Bhargava : It is done in several ways. It must be made public ; so there is a registered deal in some cases. The entire family is collected and the boy is accepted as heir. In some places even the ceremony is gone through. Practically it is tantamount to adoption.

Mr. Deputy Speaker : In those parts where this custom is prevalent, is there regular adoption as well ? Or is it the contention that wherever this custom of having 'appointed heir' prevails, regular adoption does not take place ?

Pandit Thakur Das Bhargava : This is, as a matter of fact, in addition to that.

Mr. Deputy Speaker : Can a man have both, an adopted son as well as an appointed heir.

Pandit Thakur Das Bhargava : Even in a family, one brother may have an adopted son, while another brother may have an appointed heir. But there is no difference so far as relationsip is concerned. This custom obtains among Muslims as well.

Khwaja Inait Ullah (Bihar) **:** In Muslim law there is no adoption.

Pandit Thakur Das Bhargava : I am not dealing with Muslim law ; I am speaking of Muslim customs. Almost every Punjabi Muslim follows custom.

Mr. Deputy Speaker : But it is so prevalent that it can be brought under this definition.

Pandit Thakur Das Bhargava : Nobody can doubt the validity of this custom. You can take any treatise on customary law and you will find that the appointment of a heir is a customary practice.

Shri Radhelal Vyas : Is a female appointed as an heir ?

Pandit Thakur Das Bhargava : But she cannot become a son.

Dr. Ambedkar : In view of the fact that it has been decided to confine this Bill to marriage and divorce, the point raised by my Hon. Friend may very well come when we are dealing with the matter of adoption. There we can discuss this question as to whether we can include what he calls an appointed son in the definition of adopted son. There, if he is able to satisfy that custom is a custom which this House should permit, in view of the definition which we have just now passed, we will consider that question. Here we are for the moment dealing with marriage and divorce.

Pandit Thakur Das Bhargava : But you have used the word "son" here ; otherwise there will be no need for any definition.

Dr. Ambedkar : As you know in the Chapter on Adoption, we have tried to introduce a uniform system, we are not recognising any of the variants of adoption. We say that adoption should be one common system throughout. We have also said there that so far as the ceremonies of adoption are concerned, they may be different. We do not bother about it. If the appointment of a son is satisfactory from the point of view of the deifnition of adoption, namely, the giving and the taking, the putting of the sugar in the mouth of the boy and the performance of some sacrifice, well the particular ceremonies by which they do it will not make the appointed son an adopted son.

Pandit Thakur Das Bhargava : Unfortunately, I have not been able to express myself in a way as to carry conviction to Dr. Ambedkar.

Mr. Deputy Speaker : The point raised by Pandit Bhargava has relevance to marriage as well.

Dr. Ambedkar : I am afraid, without a perfect understanding of the custom, I am not able to come to any decision—the circumstances,

the custom, the reasonableness or otherwise. Nor has my friend been able to give us any clear picture. I want to apply my mind to that subject and come to a conclusion as to whether it would be possible for Government to accept his proposal. All of a sudden it is not possible.

[12 NOON]

Pandit Thakur Das Bhargava : Let it be held over.

Dr. Ambedkar : We can add it afterwards.

Mr. Deputy Speaker : May I suggest one course ? As it is, there is no objection to passing this. The only attempt is to include some other category. Therefore this may be passed now, because we are not passing the entire clause 3. We can add one more category later. With that understanding I will put this part to the vote of the House, the question is :

> "That part (viii) renumbered as part (xi) of clause 3 stand part of the Bill."

The motion was adopted.

Mr. Deputy Speaker : Now we will proceed to clause 4.

Capt. A. P. Singh : I have already requested you that one definition should be added after part (viii). The amendment is No. 378, and is about the definition of *Kula* . It may surprise some hon. Members as to why I want that this word should be defined. But if you see amendment No. 387, there I have said that "the parties do not belong to the same *Kula* where by custom such marriages are prohibited." I want this word to be defined here so that marriages may not take place within the same Kula.

Dr. Ambedkar : May I just explain the position. I am afraid that this amendment, although it is a definition, really relates to clause 7—Essentials for a valid Dharmik marriage—where certain conditions for a valid Dharmic marriage have been set out. My friend wants substantively to add one more condition that the parties to a marriage should not belong to the same Kula. If that amendment is accepted, then and then alone would a definition of 'Kula' be necessary, although it may be argued that 'Kula' is such a well known term that no definition is necessary. But suppose when we are dealing with clause 7 this matter is taken up and the House accepts the amendment, then and there we can intorduce the definition of 'Kula'. Therefore no definition of 'Kula' is necessary now.

Capt. A. P. Singh : My difficulty is this. Whenever any such thing comes it is generally said "The word has not been defined". Therefore, I wanted that "Kula" should be defined now and let us be clear on this point. But if it can be done later I have no objection.

Mr. Deputy Speaker : If in clause 7 this is not going to be accepted, the definition here will become useless. But if on the other hand it is accepted and a definition is found necessary a consequential amendment will be made here. I am not closing the door.

Dr. Ambedkar : Or it can be done by an Explanation as to what is meant by 'Kula'.

Mr. Deputy Speaker : Clause 3 is not completed, or, as the Hon. the Law Minister said, we can give it as an Explanation.

Capt. A. P. Singh : Then it may be held over.

Mr. Deputy Speaker : Now we shall take up clause 4.

Clause *4*—*(Overriding effect of Code*).

Dr. Ambedkar : I beg to move :

For clause 4, substitute :

"4. *Overriding effect of Code*—Save as otherwise expressly provided in this Code : —

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code ; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code."

The purpose of the amendment is this. As the House will see, we had originally one single clause with no sub-clauses and the provisions of the Code relating to custom and interpretation of law and those relating to other laws passed and in force were put together. It was felt that it was not the desire of this Bill to abrogate all law but only in so far as it is inconsistent with the provisions of the Bill. I therefore, felt that the best course was to split clause 4 into (a) and (b) leaving rule, interpretation and custom to be covered by (a) and any law in force to be dealt with by (b) with the limitation that no law shall be abrogated unless it was inconsistent with this Code. It is not our intention that all laws should be abrogated by this. That is the purpose of this amendment.

Mr. Deputy Speaker : Amendment moved :

For clause 4, substitute :

"4. *Overriding effect of Code.*—Save as otherwise expressly provided in this Code : —

(a) any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code ; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code."

Dr. Deshmukh : I beg to move :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words "or any custom or usage".

Shall I speak on it now or afterwards ?

Mr. Deputy Speaker : I shall first have all the amendments that hon. Members intend moving and then allow the discussion. Amendment moved :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words "or any custom or usage".

Dr. Ambedkar : I do not understand it.

Mr. Deputy Speaker : It is that if there is a custom it shall continue. I take it that the object of the amendment is that notwithstanding any of the provisions of this Code, any custom in force before the commencement of the Code will override what is now sought to be abrogated. Is that so ?

Dr. Deshmukh : Yes.

Mr. Deputy Speaker : We will assume two things. Wherever it is not provided for, the custom will prevail, there is no doubt about it. But wherever there is some provision here, the custom will be abrogated. Custom, where it is inconsistent, will be abrogated by the amendment. The hon. Member wants that custom, not only where it is provided for here but also where it is not provided for, must override the text of law. That is the position. I will ask to reply to this later on.

Sardar Hukam Singh : I beg to move :

In clause 4, omit the words "or any custom or usage"

Mr. Deputy Speaker : It is the same thing.

Sardar Hukam Singh : My suggestion is that custom would continue in spite of this Act.

Mr. Deputy Speaker : Amendment moved :

In clause 4, omit the words "or any custom or usage".

Pandit Thakur Das Bhargava : I beg to move :

For clause 4, substitute the following :

"4. any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with the Code."

This is the positive side of the matter.

Mr. Deputy Speaker : Whatever is not provided in this Code shall have effect.

Dr. Ambedkar : That would be so, when we close with clause 55.

Pandit Thakur Das Bhargava : What I say is that these things will persist as a positive fact and there is not much difference between the two.

Mr. Deputy Speaker : Amendment moved :

"4. Any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with in this Code."

Pandit Thakur Das Bhargava : There is another amendment in my name No. 449. I beg to move :

For clause 4, substitute the following :

"4. any custom or usage in force immediately before the commmencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce."

This is an antithesis of section 4 and this is only to bring out into ironical relief the place what my Hon. friend Dr. Ambedkar wants to give to 'custom' which I personally do not approve.

Mr. Deputy Speaker : I am trying to put down categories so that I may insert all the amendments under a particular group. Amendment No. 128 relates to custom wherever there is no provision of law in this Bill. Then amendment No. 449 says that notwithstanding any provisions in this Bill all the previous custom shall stand.

Shri Santhanam : It is a direct negation of clause 4.

Mr. Deputy Speaker : Amendment moved : For clause 4, substitute the following :

"4. any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce."

Shri Naziruddin Ahmad : I beg to move :

For clause 4, substitute the following :

"4. All the texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediatley before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect."

I have another amendment, Sir.

Mr. Deputy Speaker : Is it necessary ?

Shri Naziruddin Ahmad : That is more elaborate. I beg to move :

For clause 4, substitutes the following :

"4. All texts relating to and all rules of interpretation of Hindu Law in the sacred books or in judicial pronouncement or superior courts in India or of the Judicial committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediatley before the commencement of this Code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect."

Mr. Deputy Speaker : This is in another form.

Shri Naziruddin Ahmad : It is in a more elaborate form, containing more elements.

Mr. Deputy Speaker : It is different in substance.

Shri Naziruddin Ahmad : Though in minor details.

Mr. Deputy Speaker : Amendments moved :

For clause 4, substitute the following :

"4. All texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediately before the commencement of this Act, in so far as they may be inconsistent

with this Act, shall, to the extent of the inconsistency, cease to have effect."

For clause 4, substitute the following :

"4. all texts, rules or interpretations of Hindu Law in the sacred books or in judicial pronouncement of superior courts in India or of the Judicial Committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediatley before the commencement of this code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect."

Shri Jhunjhunwala : I beg to move :

To clause 4, add the following proviso :

"Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion to the followers of which religion or religions this Code will apply :

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it."

Sir, then I have another amendment, No. 418.

Mr. Deputy Speaker : Is it a repetition of No. 130?

Shri Jhunjhunwala : This is not a repetition but slightly different. I beg to move :

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso :

"Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies."

Mr. Deputy Speaker : Who is to decide what the distinct culture is ? Whatever may be the substance so far as any Code is concerned, before I put it to the House, there must be some definite thing which is enforceable in a Court of Law.

Shri Jhunjhunwala : That is found in Article 29 of the Constitution that different sections of society have got different culture and that should be conserved.

Mr. Deputy Speaker : The hon. Member wants distinct culture to be established in a court of law.

Shri Jhunjhunwala : It is in the Constitution itself.

Mr. Deputy Speaker : There is no definition of culture as there is a definition of custom as it is provided for here. I am not aware if there is any judicial interpretation of what distinct culture is up till now.

Shri Jhunjhunwala : That is already in the Constitution.

Shri Santhanam : It must be in the directive principles.

Dr. Ambedkar : It must be somewhere in the directive principles or it might be in the provisions relating to religion and so on.

Mr. Deputy Speaker : amendments moved :

To clause 4, add the following Proviso :

"Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion or any other religion to the followers of which religion or religions this Code will apply ;

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it.

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso :

Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies."

Shri Sarwate (Madhya Bharat) **:** I beg to move :

To clause 4, add the following Proviso :

"Provided that the Legislature of a State may, by legislation passed by a majority of the total number of its or their members, provide that any of the provisions of this Act shall not apply to that State, or shall apply to that State with such modifications, as may be included in the legislation."

Mr. Deputy Speaker : How does it arise in this clause ? Any amendment must be relevant to the clause that is on hand.

Shri Sarwate : Because this would supersede all laws which are inconsistent. As the clause stands at present, it has the effect of superseding all the laws which the State might have passed before.

By this amendment I wish to give them the power, if they so wish, in future to restore them. There may be certain provisions which may not be applicable to the State. That State, if otherwise it has the power under the Constitution to legislate, should have the power and it should not be precluded from further legislating on this matter owing to the effect of this clause.

Mr. Deputy Speaker : I do not understand what this amendment means. This amendment at any rate, must have relation to clause 1. Then, I think we have disposed of a similar amendment with reference to clause 2.

Dr. Ambedkar : Pandit Malaviya's amendment was more or less to the same effect.

Mr. Deputy Speaker : Apart from this, this is a concurrent subject. If the local conditions and circumstances require a State Legislature to make any law, that law has to recieve the assent of the President. If it receives the assent of the President, to that extent, the provincial law will override or modify this law. That provision is there in the Constitution. I do not know how far we can make a law here which will override or remove the need for the President's assent in a concurrent subject. A provincial legislation cannot have overriding effect unless the President's consent is there. Indirectly, we are now trying to say that notwithstanding the need for the President's consent under the Constitution, a provincial legislature can pass a law even in a concurrent subject. How can you do away, with the right of the President. I think it seems to be unconstitutional.

Shri Sarwate : The provisions of the Constitution are not superseded ; they also go along with this. If for a provincial legislation that pre-condition is necessary, that pre-condition is attached. It does not mean that that is taken away.

Mr. Deputy Speaker : It does away with the wholesome provision that there ought not to be any inconsistency between the laws passed by the Central legislature and by the State legislature. The state legislature could not be clothed with power, except in exceptional circumstances, to make such laws. The President must give his consent. I do not know how we can pass provision overriding all this. On these grounds it has already been voted upon by the House under clause 2 ; it also militates against the provisions in the Constitution. Is it necessary that we should take up this amendment ? Any other amendment ?

Dr. C. D. Pande (Uttar Pradesh) **:** I have an amendment, sir.

Mr. Deputy Speaker : Already tabled ?

Dr. C. D. Pande : Already tabled, but not listed so far. I have got a copy.

Dr. Ambedkar : I have not got a copy.

Dr. C. D. Pande : At least I have been supplied with one copy.

Mr. Deputy Speaker : When was notice given ?

Dr. C. D. Pande : I gave notice in the Notice office this morning and they have given me this copy. This has got to be moved. In any case, the office has given this copy to me ; it may have been given to the Hon. Law Minister as well.

Mr. Deputy Speaker : Amendments will be pouring in everyday in the morning. This is only the first of its kind. We had similar amendments also. I do not propose to waive the notice for such amendments unless the Hon. Minister sponsoring the Bill is willing to accept them.

Pandit Thakur Das Bhargava : With your permission. Sir, I beg to move amendment No. 420 in my name.

Mr. Deputy Speaker : The same amendment in another form.

Pandit Thakur Das Bhargava : There is difference. Tthere is a small error here ; it is wrongly typed. It should be "in so far as it is inconsistent".

Mr. Deputy Speaker : That has been provided for.

Pandit Thakur Das Bhargava : That has not been provided for. The original clause 4 says :

"Save as otherwise expressly provided in this Code, etc....."

These words are not there.

Dr. Ambedkar : The words are there :

"Save as otherwise expressly provided in this Code."

Pandit Thakur Das Bhargava : I say that so far as this Code goes, any custom shall cease to have effect.

Mr. Deputy Speaker : The matters must have been dealt with in this Bill.

Pandit Thakur Das Bhargava : That is not necessary. We make a provision that custom is saved and by the force of that section, custom is saved.

Mr. Deputy Speaker : Let us see what the objection is in principle. What this clause wants to do is whatever may be the custom, in so far as it is provided for by this Bill, the provisons of this Code will

have to prevail except in so far as a specific reservation is made. What is his objection ?

Pandit Thakur Das Bhargava : This is an amendment to the old clause 4. There is no question of inconsistency etc. there.

Mr. Deputy Speaker : Only in cases where it is inconsistent, the Law must override. If it is not, it may continue.

Pandit Thakur Das Bhargava : This is an amendment to the original clause 4. It is quite different from the new clause 4. If you adopt the amendment moved by Dr. Ambedkar, then, it may be unnecessary.

Dr. Ambedkar : That is my amendment.

Pandit Thakur Das Bhargava : I am in agreement with your amendment; but I have given a different amendment.

Dr. Ambedkar : What is before the House is my amendment.

Pandit Thakur Das Bhargava : The original clause 4 does not consider the question of inconsistency at all.

Mr. Deputy Speaker : I am not able to follow the need for this amendment.

Shri Santhanam : He wants to restore the original wording that the custom should be invalid to the extent of inconsistency.

Dr. Ambedkar : We have never used the word 'inconsistent' even in the original clause. The original clause was :

> "Save as otherwise expressly provided in this Code, any text, rule, or interpretation of Hindu Law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code."

It was an absolute thing with regard to law and custom.

Pandit Thakur Das Bhargava : In clause 4 as it stood in the original Bill, there is no reference to inconsistency. It is absolute. My amendment seeks to amend the clause in two ways : in the first place these words are not there : 'save as expressly provided etc.'. Secondly, the question of inconsistency is absent in the original clause. Then all customs and texts of Hindu Law shall prevail but to the extent of inconsistency only they would not have effect. Otherwise whatever is provided in this Act will have effect. With your permission. Sir, I move amendment No. 420, with this correction. I beg to move :

For clause 4, substitute the following :

"4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediatley before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code."

Mr. Deputy Speaker : Amendment moved :

"4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediately before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code."

Shri Syamnandan Sahaya : I beg to move :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words "this Code", where it occurs for the second time, insert the words "in so far as it is inconsistent with any of the provisions contained in this Code".

Mr. Deputy Speaker : In part (a) ?

Shri Syamnandan Sahaya : Yes.

Mr. Deputy Speaker : The object of the Law Minister seems to be that once a particular matter is dealt with here, you need not go to any other Code. But the suggestion of the amendment seems to be that it is only in cases where the provisions are inconsistent with the provisons of the Code that the code provisions will prevail.

Shri Syamnandan Sahaya : That is exactly my point.

Mr. Deputy Speaker : Amendment moved :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words "this Code", where it occurs for the second time insert the words "in so far as it is inconsistent with any of the provisions contained in this Code".

And so the following amendments have been moved :

No. 6 of Dr. Ambedkar, No. 450 of Dr. Deshmukh, No. 129 of Sardar Hukam Singh, Nos. 128, 420 and 449 of Pandit Thakur Das Bhargava, Nos. 380 and 419 of Shri Naziruddin Ahmad, Nos. 130 and 418 of Shri Jhunjhunwala and No. 417 of Shri Symnandan Sahaya.

These amendments and the clause are now thrown open for discussion.

Dr. Deshmukh : This is a very important clause and it has assumed greater importance because the provisions of the present law are going

to be limited only to those related to marriage and divorce. It was for that reason that I was going to say, so far as clause 3 was concerned, that there was not any very great need for a definition of the words "custom and usage". Also I thought that so far as marriage and divorce were concerned, there was the prevailing opinion that custom should not be taboo and should not be prevented from operation to the same extent as might have been the case if we were to include inheritance and succession in the provisions of the Code. So I thought that since we were going to limit this now only to marriage and divorce, insisting on defining custom and usage and also making provisions in clause 4 were not of such great impotrtance. Therefore, I was suggesting that the definition also should be omitted from clause 3. so far as the wording of the definition is concerned. I am in complete agreement with the learned Doctor, because it is aboslutely identical with the rulings on the subject and there is not a single word there which can be objected to. In fact, if anything, it liberalises (Shrimati Durgabai in the Chair) and widens the scope, for it extends to anything uniformly observed for a long time and it gives recognition even to family customs. From that point of view there is nothing objectionable about the definition. But so far as most of the provisions in the present Bill are concerned. I would like the Hon. Minister to view the whole thing as early as possible from this point, namely that the provisions are now going to be limited only to marriage and divorce. Now as he had himself admitted, there are many things here in this Bill, many provisions which were intended specifically to govern other provisions in a particular manner, I would like him to view even some of the provisions to which we are going to confine ourselves from this point of view. If he does that I think some modifications would be necessary even in this clause which gives the overriding effect to this law as against custom and usage as well as interpretation of Hindu law prevalent at the moment.

If we pass the clause as suggested by Dr. Ambedkar's amendment we would certaiinly be going further than what was, I believe, intended. Sub-clause (a) of clause 4 reads :

> "Any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code."

If it is correctly interpreted, it would mean that all custom and usage so far as marriage and divorce are concerned will be barred, because they are matters dealt with in this Code.

Shri J. R. Kapoor : Unless specially saved.

Dr. Deshmukh : I fully agree with the amendment notice of which has been given by my friend Mr. Sahaya. Since you put these words here, so long as you legislate on the subject of marriage and divorce, as far as I can understand, it would not be possible to recognise any custom or usage.

Dr. Ambedkar : We are saving some things.

Dr. Dsehmukh : Not unless the saving is put down.

Dr. Ambedkar : The clause begins with the words "Save as otherwise expressly provided".

Dr. Deshmukh : So far as my view of the matter is concerned, as regards marriage and divorce, custom should have the play. We have the instance of the Punjab, which is being governed more by custom than by specific legal provisions.

Dr. Ambedkar : We want to raise the people of the Punjab to our standard.

Dr. Deshmukh : From that point of view I have tabled an amendment to omit the words "any custom or usage" so that any custom or usage which does not contravene or which answers the requirements of clause 3 should prevail and continue. If this is not done, I am afraid, any other provisions in the subsequent clauses will not help us. According to my understanding, if part (a) of clause 4 is adopted as it is, even where it is the wish of the House that custom and usage should be recognised side by side with the provisions of the law, it will not be possible to clothe them with that recognition. Therefore it would be best to omit the words "any custom or usage". Some of my friends have gone to the extent of saying that it should override the provisions of the law everywhere, as has been suggested by Pandit Bhargava. That would probably be something which is absolutely contrary to clause 4. It would be tantamount not only to the omission of the clause but would be putting it in the opposite direction.

Shri J. R. Kapoor : It would be a negation of the Code itself.

Dr. Deshmukh : I agree that it would be a nagation of the Code. My submission is that there would be ample room for the continuance of any recognised customs and usages so long as we do not bar them by this enactment. I do not think it would be correct to leave the sub-clause (a) as it is. The original clause was to the effect that any custom or usage or any other law in force immediately before the

commencement of the Code shall cease to have effect as respects any of the matters dealt with in this Code. From that we have modified the position slightly, so long as we limit the law only to marriage and divorce. I would like that usage and custom should be allowed to prevail because it has stood the test of time, it is more convenient and less expensive, and it is likely to be less oppressive to the people. I submit there is everything to be said in favour of the amendment I have moved.

Sardar Hukam Singh : I have moved my amendment whose purport is identical with the amendment Dr. Deshmukh has moved. I entirely associate myself with what my learned friend has just now said, but in addition to that I have to submit certain other points. In clause 3 we have just defined custom and usage; how we have exalted it and dignified it is apparent form the words used :

> "the expressions 'custom' and 'usage' singly any rule which, having been contibuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family :
>
> Provided that the rule is cerain and not unreasonable or opposed to public policy".

I beg to submit that when we have laid down a definition and have restricted what actually a usage or custom is for it to be recognisd, immediately after that we deal a fatal blow to it in clasue 4.

An hon. Member : There is saving.

Sardar Hukam Singh : There is saving—everywhere, in every clause you say, save something which is deemed proper. But I look at it the other way. It should not mean that for every clause wherever an exception is deemed necessary a saving clause should be added saying that such-and-such a custom should be saved. Why not save it aboslutlely when it has the status of law ? It cannot be imagined that it is so vague, so uncertain or so indefinite that you cannot reach at it or find it out. It is not only on the lips or in the hearts of the people in general, but I lay claim to this fact also that it is already laid down in public documents and it cannot be changed arbitrarily. If somebody were to say that it might lead to litigation, then I can lay the counter-charges that even in codified laws there are always disputes, even in registered documents and registered facts there are disputes. I might read form Mayne :

"The *Rivaj-i-Am* is a public record, prepared by a public officer in the discharge of his duties under Governmet rules. The statements therein may be accepted even if unsupported by instances. Manuals of customary law in accordance with the *Rivaj-i-Am* have been issued by authority for each district."

So, those customs are not carried orally that there can be dispute about them ; they are contained in public documents. At each settlement they are revised and scrutinised to see that everything is correct according to the custom that prevails. There is no danger about it. My fear is that we have been governed so long by a very simple law. We are told that it is now too late in the day that Punjabis should rise up and say that they are not governed by Hindu law. Of course, that is our claim. The Punjab Laws Act, clause 5, does define that we have been governed by customary law in preference to the Hindu law. Everybody knows the customary law and understands it well.

Dr. Ambedkar : This is much simpler than customary law.

Sardar Hukam Singh : We are told in one breath that we have so long been governed by Hindu law—well and good—but in another breath we are told that that was not the proper Hindu law. Hindu law is now rediscovered and a Code is being brought and thrust upon us. The law-giver says that this is the Hindu law. Where is the guarantee that this discovery might not lead to another after a few years and we may not be confronted with the statement that the law then being propounded was the correct one and everybody else who went before it had made a mistake. If it is progressiveness, we claim that our customs are more progressive than the law which is being proposed now. If progress is to be the criterion, then I say : don't touch us. If you wish to move forward, we are already in advance of you. Come after us. Even in regard to marriage and divorce, we are far in advance of you. Do not pull us back. Laws should refect the stage to which the society has advanced and if the law-giver now thinks that we have advanced to this stage only now, then he is mistaken. If it is only for the sake of bringing about uniformity, then too I am afraid he would not succeed. The variations in the customs and usages, in the cultures and languages, cannot be blended together in so short a time.

An appeal was made to the Sikhs yesterday that they should forget the old days and try to become part of the nation. That is a thing that we would cherish. We are not opposed to it. but if Dr. Ambedkar cares to listen to me ...

Sardar B. S. Man (Punjab) **:** He is talking to somebody, he does not bother to consult us. He does not bother about our opinion.

Sardar Hukam Singh : I find he has turned to me now.

We were reminded yesterday and an appeal was addressed to us yesterday that we should try to become part of the nation ; that we should have no tendencies to remain separate. That was very good of him and I thank him wholeheartedly. We are prepared to come forward and meet him more than half way but I would just remind him, as I did yesterday, that he should begin at the Government and at the Cabinet itself, he ought to advise the President that he should not make discriminations when he issues orders, and I particularly referred to the Scheduled Castes Order of 1950,

Dr. Ambedkar : I think my hon. Friend may legitimately criticise the Government, but I think he ought not to bring in the President, because whatever the President does he does on the advice of the Ministry and I would be quite prepared to bear all the criticism that he wishes to direct against me.

Mr. Chairman : I think this point has been made clear on a former occason when the Deputy Speaker told the House that the President's views are not to be canvassed or criticised on the floor of the House.

Sardar Hukam Singh : Perhaps I have not been heard. I said that Dr. Ambedkar should 'advise' the President. I think I am within my rights in saying that. I am not criticising the actions of the President. I am only requesting Dr. Ambedkar to advise the President. He has been advised by Dr. Ambedkar and other Ministers, and I am requesting Dr. Ambedkar to advise him. My appeal to Dr. Ambedkar is that he should beg at home.

Sardar B. S. Man : On a point of order, Madam. Some doubt has arisen in my mind. Since the actions of the President are under the advice of the Government, supposing that an action of the President is such that it gives rise to a complaint in the House, particularly at this moment when the Punjab is being governed directly by the President, is it not open to me to question the advisability or validity of certain orders of the President which to my mind are unjust ? In that case it will not be possible for me to question the actions of the President as such.

Dr. Ambedkar : I am quite certain about it. Even if my hon. friend has an occasion to criticise any of the orders that have been issued by the President, it would not be open to him to criticise the President. he can censure the government if he likes.

Sardar B. S. Man : Even when the orders are issued directly by the President ? Of course, the constitutional presumption is there that these orders are issued on the advice of the Cabinet. The situation in the Punjab is that it is governed directly by the President. Of course the responsibility for any orders issued by him would fall on the Cabinet, but when the orders of the President are to be discussed, how can I refer to them except as orders of the President ?

Mr. Chairman : The Constitution very definitely says that everything that the President does shall be on the advice of his Council of Ministers and that explains every act of the President.

Sardar B. S. Man : Suppose I want to refer to the orders made by the President in relation to Punjab, I can only refer to them as the orders of the President, though the presumption remains that they are made by the President on the advice of his Cabinet. I would like to have a clear ruling from you on that point.

Mr. Chairman : I think the point has been made claear already by Dr. Ambedkar and whatever explanation he has given applies to this category of orders as well, to which the Hon. Member has just referred.

There are two positions; one is that the President are not to be criticised, the other is that the President, whatever he does, does it on the advice of his Cabinet. If these two are taken into consideration, the conclusion will be that even though his actions are based on the advice of the Cabinet, yet thery are not to be criticised.

Sardar B. S. Man : Even if they are unconstitiutional—even if they are bad ? I can always say that this advice which has been tendered to the President is bad advice.

Mr. Chairman : We have accepted the provison in the Constitution that the President's actions are not to be criticised.

Sardar B. S. Man : We can even move a no-confidence motion.....

Dr. Ambedkar : You can move a no-confidence motion in the Government, not the President.

Shri Damodar Menon (Travancore-Cochin) **:** Has not this House a right to impeach the President ?

Dr. Ambedkar : That is a separate matter altogether.

Mr. Chairman : I would, in this connection, refer the House to clause (VI) of Rule 159 of our Rules of Procedure which says :

"A member while speaking shall not—,

* * (vi) use the President's name for the purpose of influencing the debate;"

Sardar B. S. Man : In fact, it is the Government that is using the name of the President. When I criticise certain actions of the President, the odium attached to them may be of the government or the advisers of the President. It is up to the people to pass it on to wherever it belong. But when the orders issued are of the President, criticism ought to be in the name of the President. Because, at present in the Punjab we are being governed by the President, am I to forego the right of criticism ? It may close the door for all future time to come. That is my point.

Mr. Chairman : My own personal feeling is that if Hon. Members are not prevented from criticising, as they are doing it in the House, they may direct their criticism to the government who are giving bad advice—if it is bad advice in their opinion. If the Government is at the bottom of the President's action, if in their opinion it is not the President who is acting but it is the government which is tendering bad advice, it is aboslutely open to the Members to criticise the Government on their actions without bringing the name of the President.

Dr. Deshmukh : Can we also say that we are not criticising the President and that we are criticising the Government ?

Mr. Chairman : Therefore, where is the difficulty? When the Members are free to criticise the actions of the Government and there is absolutley no bar to their expressing their views frankly and openly, they need not feel or suffer from the trouble that they are not able to bring in the name of the President directly.

Sardar B. S. Man : We are not bringing the name of the President but the actions of the President, as they are the actions of the Government. It is for you to presume just as it is for me to criticise.

Mr. Chairman : I think I have made the point quite clear. If it is in their mind that it is the Government that is at the bottom of the President's action and that is not advising properly, if the Government is the subject matter of the attack, they are absolutely free to attack the Government. Nothing bars them.

Sardar Hukam Singh : I am sorry that my appeal has been lost in this discussion that took place over the question whether we can

criticise the President or not. But my purpose is not to criticise the President at all. He is not to blame so far as my point is concerned. I bring the charge directly against Dr. Ambedkar, because he made an appeal to me and other Sikhs that we should not think in such separatist terms. But the blame lies on the other side. He has started this game and kept us at a distance when he was advising the President to make that order about scheduled castes. That is my complaint. Before he makes an appeal to me that I should change my mind, he should begin from his own sphere and remove that injustice. That was my first point.

The second point is when we submit that custom in Punjab is much simpler and much more easily understood by the average citizen, we are confronted with this question whether we want monogamy or not. That is not the question. Monogamy we do want. We support and welcome it. Everybody wants monogamy. Nobody is against it. Already public opinion is so strong that now normally all people are for monogamy. Moreover the economic condition of the country is such that nobody can now bear the burden of more than one wife. There is no denying the fact that it is not possible for an ordinary man now, except those that are placed in a privleged position like our Doctor himself, to have a second wife. Therefore no question arises about monogamy. Even if it comes we are not against monogamy, we welcome it. But the question is that there are other things that will follow. There are prohibited degrees. There are other ceremonies. So far as Punjab is concerned, our prohibited degrees are much fewer. You are contracting it by this Bill and you will have to contract it further. Though we are not passing the protion relating to inheritance at this moment, it is contemplated to pass it in the near future. If you want that the girl should have a share along with her brother, then this long list of prohibited degrees cannot remain. Obviously we would be compelled to contract it more and more unless you give inheritance to our cousins and sisters and others (*Interruption*) like Muslims certainly. Both the things have to go together and already in the Punjab custom, there is a list of prohibited degrees which is recognized and permitted by custom and if you are doing anything against that progress which you claim you are helping to proceed, surely you are bringing us back when we have gone so far forward. (*An Hon. Member* : Leading). Yes. We are leading the whole of India.

1 P.M.

(MR. DEPUTY SPEAKER *in the Chair*).

So far as the other things are concerned, a short while ago the question arose when my esteemed friend, Pandit Thakur Das Bhargava moved his amendment that along with the adopted son, the appointed heir should be added, and this was opposed on the ground of certain objections and interruptions. The adopted heir is as good as an adopted son as in any other part of India. The only advancement or progress that is there is that no particular ceremonies are observed. The age is not restricted and so far as relationship is concerned, that is not restricted also.

Dr. Ambedkar : Did not we decide that we will take the case of the adopted heir at a later stage ? I thought that the House agreed to that. When we were discussing clause 3 on the definition of son, Pandit Thakur Das Bhargava raised that qustion and I submitted to the house that this was a matter which may be considered later on at the appropriate stage either when we come to the conclusion

Mr. Deputy Speaker : When we were in the definition.

Dr. Ambedkar : My hon. Friend is referring to the adopted son. We have not come to that yet. I am only saying that we can save the time and get through clause 4.

Mr. Deputy Speaker : We agreed to put it off till Part VII. We can discuss this at a later stage when this matter comes up.

Sardar Hukam Singh : This interruption of the Hon. Minister has created an apprehension in my mind that he is not following or I am not able to make mysef clear.

Dr. Ambedkar : I am following and I have caught this point that the whole of Punjab is very progressive as against all others.

Sardar Hukam Singh : That he has caught all right but if I am giving the reasons and instances, he would not care to follow. I am giving an instance where the usage or custom is so necessary and I am saying.....

Dr. Ambedkar : This part of my education will be better left out now. I will receive it at a later stage.

Babu Ramnarayan Singh : That you will have to learn.

Sardar Hukam Singh : It is not only the doctor himself who is to be educated, but there are others also. If I have to request Hon. Members to give their vote for me, I have to convince them

Dr. Ambedkar : Later on.

Mr. Deputy Speaker : What is now suggested is that this discussion should be blocked. But in another place when the same

matter was raised in clause 3 it was suggested with regard to the definition of a son that an adopted heir must also be a son. When we come to clause 7 where the prohibited degrees are narrated, it may be considered whether it should be included, or an explanation added. Let us take up this when we come to clause 7.

Sardar Hukam Singh : I am extremely sorry that I have not been understood. What I wanted to say was this. I am only advocating that usage and custom should continue to override the law. In advocating that I am explaining the utility of usage and custom, the progress that it has made over law and why it should be retained and what differences there are between custom and other laws. In that connection I am referring to the son ; I am not trying to define 'son' or other people. That was my object. But, if the Doctor Saheb says that I should not continue, I will stop.

Dr. Ambedkar : I was only saying that we may discuss this later on.

Mr. Deputy Speaker : We may discuss that later on.

Sardar Hukam Singh : Then, I was submitting, Sir, that so far as custom and usage in the Punjab is concerned, it is recognised and well understood. It has continued to override the Hindu Law as was understood by the common man or even by lawyers and law-givers. There is no reason why, when it has been overriding Hindu Law for such a long time, has stood the test of time, has stood the test of scrutiny of judicial pronouncements and other tests, it should now be abrogated because a new law has been discovered and that is being given by another law-giver it should continue. It has been definite. It is reasonable. It has stood the test of time and has been uniform. As I have already submitted it is contained in public documents and can easily be ascertained. There can be no ambiguity about it. Therefore I submit that these word 'usage or custom' should be omitted from this clause.

Mr. Deputy Speaker : Pandit Thakur Das Bhargava.

Dr. Ambedkar : If I may plead. Sir, I would like this clause to be put to the House before we disperse, if the House permits.

Some hon. Members : No, no ; this is a very contentious clause.

Mr. Deputy Speaker : I am giving opportunity to the Members who have moved amendments. First Dr. Deshmukh, then Sardar Hukam Singh, and then Pandit Thakur Das Bhargava; there are then Mr. Naziruddin Ahmad and Mr. Jhunjhunwala. I am afraid it will not be possible with the best of intentions.

Some hon. Members : This is a very controversial clause.

Mr. Deputy Speaker : I think we must sit tomorrow. We shall be sitting tomorrow also.

Some hon. Members : Yes, yes.

Some hon. Members : No, no.

Capt. A. P. Singh : Tomorrow we must have a holiday.

Mr. Deputy Speaker : There is so much of work in the Order Paper. We have not even finished clause 4. There are 55 clauses in all, in this chapter. In these circumstances, I am afraid we will have to sit tomorrow.

Capt. A. P. Singh : We have got to study so much about this Bill and about so many other things. We should have some time.

Mr. Deput Speaker : There are no questions tomorrow. I have no objection to sitting from 9-30. We will sit at 9-30 a.m. This will be the only work tomorrow.

Some hon. Members : Yes.

An hon. Member : Up to ?

Mr. Deputy Speaker : 1-15 as usual.

An hon. Member : 9-30 to 2 O'clock.

Pandit Maitra (West Bengal) **:** Up to 12 O'clock, Sir. We have got other work.

Pandit Thakur Das Bhargava : This is the most contentious clause in the whole Bill *(interruptions)*. Sir, I was submitting that clause 4 is the most contentious clause in the whole Bill. As a matter of fact while we were considering clause 2 which took so much time of the House, the contentions were really such as appertained to clauses 4. Human nature as we know it, loves its own customs. In societies where the law-making power is not fully evolved the conduct of the people is governed by customs, and custom gets fixed in the affections of the people and its seat is deep in the hearts of people to such an extent that people love it in preference to imposed law. Therefore, the question which is put to us when we go out into the country is "Are our customs to be safe or not ?" a few days ago I was in the house of one of my friends who happens to be a Minister of the Govrnment of India and his orderly asked me. "What are you doing, Sir, with regard to the Hindu Code ?" I told him that the Hindu Code Bill was being discussed and some portions of it will be passed. The very next question that he puts me is, "Will it do away with

our divorce custom ? "that was the question that he asked me. I told him, "Well, it is likely that the divorce provision will be passed and so far as the customs were concerned, those, customs would be recognised only if they stand a special test and all customs would not be continued. He was not happy. He wanted that his own custom whether it be reasoanable or not, may be recognised and fully given effect to. Sir, that is really what is in the minds of the people now. All the same, so far as this House is concerned and so far as the representatives of the people are concerned, we are anxious that custom should come into this law only to a certain extent. We want that such customs as have gone very deep in the affections of the people should be continued. So far as South India is concerned we know that there are certain connections and manages there which are regarded as very objectionable in North India, but they are considered right and proper in South India. They should not be interfered with. Similarly, Sir, there are some customs or well-established practices in other parts of India and no person would say that they should be interferred with. In this connection I would illustrate my point by reference to a custom that is very widely prevalent among the agricultural classes in the Punjab and which is going to be disturbed by some of the provisions that we are making here. There a certain kind of marrage is performed called the *Kareva* marriage. If a man dies his wodow is married to his younger brother or to any person who is of the same status as a brother even though this brother may be of the same age or younger than the woman. In some sections she is married to the elder brother also, but that is not the practice in other sections. Now, in that form of marriage you do not have the usual marriage procedure, the *"Sapta pada"* and all that. They just go through a customary rite and the marriage is considered as having been performed. The final result of this practice is that neither the property nor the woman goes out of the family and also the children from the previous husband are properly looked after. And this custom has been prevailing among these people from very ancient times. The upper-class Hindus are now adopting gradually this custom of widow-marriage. This sort of widow remarriage which is practised by the agriculturists in the Punjab is being adopted by the upper-class Hindus also. So the custom now is that even if the younger brother of the deceased has a wife living, he will have to marry the widow of his elder brother and they live as husband and wife. This is practically a case of bigamy according to the Hindu Code.

Mr. Deputy Speaker : How ?

Pandit Thakur Das Bhargava: The younger brother may have his wife living and according to custom the widow of the elder brother is married to the younger brother even though he may have a previous wife by marriage. (*Interruptions*).

Mr. Deputy Speaker: There are certain customs prevalent in particular parts which accroding to them are valid and not unusual. Let us not show any kind of derision or disagreement by any visible representation such as laughter lest we should wound their feelings. I only put the question for the purpose of knowing the details of it so that the House may understand the position.

The hon. Member may continue his speech tomorrow.

The House then adjourned till Half Past Nine of the Clock on Saturday, the 22nd September, 1951.

* HINDU CODE—*contd.*

***Pandit Thakur Das Bhargava** : (*English translation of the Hindi speech*). Sir, an hon. Member has expressed the desire that I should speak in Hindi. In deference to that I wish to express myself through the medium of that language.

As I was submitting yesterday before the House, our customs are of very heterogeneous character. They are so different from one another that a custom considered to be good in one part of the country may be thought of as a very reprehensible one in another. So we should proceed about this Bill very cautiously. Yesterday I mentioned the *Kareva* form of marriage at which some hon. Members had laughed. This custom is prevalent to a great extent in Punjab and Oudh and it is not a matter of laughing. If you judge it from the point of view of high ideals of Hindu society, it is possible that some of the hon. Members may not like the *Kareva* form of marriage because according to the ancient standards the wife of the elder brother is to be treated as mother. According to Ramayana when Lakshmana's mother gave her consent to his going with Rama in his exile, she said :

> "*Ramam Dasharatham viddhi, mam viddhi Janakatmajam; Ayodhyamatvim viddhi, gachhtat yathasukham.*"

She asked Lakshmana to look upon Rama as his father and Sita as herself i.e., like his mother, and think that the jungle was Ayodhya. Such was the high ideal of our society. How many young men are prepared to go in exile at the orders of their fathers ? How many men respect an elder brother like a father ? Such behaviour is ideal. As far as the customs prevalent in society are concerned, even our Shashtras have ordained that the younger brother of the husband is *Dwivar* the second, prospective husband. In many cases the Shastras have permitted men to marry the wives of their elder brothers, after their (brothers) death. There is nothing surprising in that. I am conversant with the customs prevalent in Madras and other States. I toured the whole of India in the capacity of a member of the Age of Consent Committee and enquired into the various customs. That is why I say that we have a number of customs of different character and I need not dwell over their intricacies. One should not inquire the feelings of a sect, the feelings which form the basis of a particular custom. I want to submit that there is no good reason to laugh at this *Kareva* system of marriage. In fact, many advantages accrue from

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3072-82.

this system and those communities that have followed this custom for many centuries have benefited from it to a great extent. For example, in old days and even now in India, when a girl is married in a certain family, she becomes a member of that family, though she is married to one individual. Whatever share of property she gets becomes a part and parcel of that family's property. An effort is made to retain the property and her share in the family, and after her husband's death the responsibility of bringing up her children devolves on the family as a whole. This is the basis of the *Kareva* system. By following this, she by getting married to her husband's younger brother or his cousin continues to be a member of the family even after her husband's death. In this way her children by her first husband are brought up with the same love as before and are not inconvenienced in any way. The hon. Members are aware that such popular customs have been recognised in India. According to Section 2 of the Widow Remarriage Act, 1856, if a widow marries again she loses all her rights in her husband's property. I would invite the attention, specially of Hon. Dr. Ambedkar, to the fact that after remarriage a widow loses all her rights pertaining to maintenance or to her share in her former husband's property. The obvious reason for this is that after remarriage, a widow becomes a member of another family. But by following *Kareva* system i.e. marrying her husband's brother after his death, she retains her share in her former husband's property. This custom is prevalent to a great extent in Jat Sikh communities in the Punjab. When the widow continues to be a member of her husband's family by marrying his younger brother after his death, she does not lose her right over land.

The Minister of Law (Dr. Ambedkar): Would this not be more relevant when we deal with the clause on marriage ? Now we are dealing in a general way. I have said that whenever each clause comes, to whatever extent it may be necessary that clause may be made subject to custom. I would only suggest to my friend that probably his remarks would be more relevant when we come to that part.

Mr. Deputy Speaker : I have also been thinking of it. The amendments he has tabled seek that only those portions of the Bill must prevail where they are not inconsistent with custom, Then he wants certain customs to be saved. So far as these customs—which will be saved—are concerned, they may be more specifically referred to when we come to the relevant portion on marriage and divorce. With reference to the general question as to whether this should operate

where there is inconsistency or whether it should generally operate where it deals with the matter, this is a matter which may be dealt with when we come to details.

Dr. Ambedkar: Would the difference be very great ? supposing we say that any custom which is not inconsistent will be safe or we say "subject", I think the effect would be the same.

Mr. Deputy Speaker : The hon. Member need not go into the customs *in extenso.* A general indication of the custom is enough. We may dwell on the details when the relevant clause comes up.

Pandit Thakur Das Bhargava: I realize the force of Hon. Dr. Ambedkar's objection.

Dr. Ambedkar : I do not object. All I say is that it will be more relevant in the other context.

Pandit Thakur Das Bhargava : I will not dwell upon the details of any custom. As the Hon. Deputy Speaker said all the four amendments moved by me contradict one another. One of them is that custom should over-ride all laws and even prevail upon the Hindu Code Bill. I gave an example of our customs in order to impress upon this House that if we agree to the principle underlying this amendment, we lose our stand. I do not want that my amendment, saying that custom should override laws, be passed. It should be eliminated. I mentioned *Kareva* system in order to bring out the nature of our customs. Sir, I submit that I do not want that the House should try to keep this custom intact, I shall not press the House for the saving of those customs which I do not consider to be proper.

Mr. Deputy Speaker : Would it not go against the very spirit of the Code ? (The object of this Code is to gather the varied customs and put them into a single Code). Hitherto, customs have not been codified. Some customs have been upheld by the courts and if we go on making exceptions, the whole law will become nebulous. The purpose of the Code itself will be frustrated. I think the Code seeks to incorporate the customs which have been upheld by courts and a presentable document is placed before the country which can be the basis for further additions, if necessary. But it will go against the very grain of this Bill if all the customs are exempted. Only in exceptional cases, special provisions should be made in regard to customs. I am not ruling the hon. Member out of order. Now that we have accepted the principle that we must codify certain matters, it follows that any custom which is inconsistent with this law must go.

Pandit Thakur Das Bhargava : With all respect I beg to submit that I support each and every word of what the Hon. Deputy Speaker has said, because it is right and it tallies with what I mean by my remarks. For many a year, decisions have been made on the customary laws and customs of the Punjab, decisions which are in conformity with justice, equity and good conscience. Thousands of suits have been fought on the issue of our customs. So we should take them as a basis and follow such customs.

Sir, you remarked that if we were to go on making exceptions in the case of every custom we would enter a nebulous state of things and the Code would become useless. I go a step further and submit that we should make exceptions in the case of those prevalent customs only which are considered to be right, such as the *Kareva* system which should be allowed to remain in operation for some time. In Madras and Bombay Acts there is a provision that customary dissolution of marriage would remain operative wherever it is prevalent. Where such customs are provided for, all customs should be either allowed to remain operative or be done away with. I take codification to be an attempt at improving bad customs. The hon. Dr. Ambedkar dose not agree with me. He wants to codify all customs. I appeal with all sincerity that while codifying we should retain only good things and leave out the bad ones. I am opposed to that kind of codification which would include even bad customs. It is not our intention to perpetuate bad customs through codification. (I want to make it clear from my amendment, that customs should prevail. I have also proposed that universal laws and principles should be given due importance, a scrutiny should be made with the purpose of judging as to what is needed and all advantages and just universal laws, usages and customs should be retained.

If we want to codify our usages and customs, (I would like to point out that the most important of our customs is that we should not allow divorce). But we are going to give our women the liberty of divorce, because the Constitution and the sense of justice do not allow that women should lack this liberty. Go ahead and give them this right but bigamy is an established custom. It has been in vogue for many centuries and it is prevalent in some sections of our society. After the passage of this Bill and the enforcement of monogamy a person would not be able to marry another woman by the *Kareva* system as long as his first wife is alive.

Mr. Deputy Speaker : The only point is this. In so far as the *Kareva* custom is concerned, it allows bigamy in particular circumstances. I think when we come to monogamy we can deal with that. But on general principles, the hon. Member can only say that this Code should be applied to all cases except that he may refer to some cases here and there by way of illustration to show that they may be exempted.

Pandit Thakur Das Bhargava : I have not touched upon any particular custom. I want only to show what is the place of custom in this code. Only to illustrate this, I mentioned the example.

Mr. Deputy Speaker: I think the sponsor of the Bill feels that he has looked into all the customs and he has included all customs that, according to him, must have the sanction of law. Other hon. Members may feel that certain other customs prevail and exception must be made for them in the body of the Bill. If that is so, it should be done at the appropriate stage. At present we are on the general provision which says that any custom that is unwholesome and therefore inconsistent with this Code will go. Should we not make a provision like that saying that in so far as matters regulated by this code are concerned, such a custom shall not prevail and shall not have force ? What is relevant therefore on this clause is the general nature of the custom and a few illustrations here and there. Even if there be a single custom which has to be abrogated by this Bill, such a clause is necessary. We are now going into the root of the matter. As to whether a custom has been enjoying uniformity, continuity or is of ancient nature—those are matters which certainly can be looked into and if some additions are suggested by hon. Members those can be considered.

Pandit Thakur Das Bhargava : Had we been discussing the whole of the Code this clause would have been absolutely necessary. But we are going to pass only a chapter in which at every step it is provided that custom will prevail in such and such case. That is why I mentioned an example to show that such a custom has been prevailing for many centuries.

Mr. Deputy Speaker: Even if there is a single unwholesome custom relating to marriage and divorce, this clause is necessary. For instance, the sponsor of the Bill feels that whatever might be the exceptions, a maternal uncle marrying his niece, that is a brother marrying his sister's daughter should not be exempted.

Dr. Ambedkar : We shall deal with that matter at the relevant stage.

Mr. Deputy Speaker : Let us assume that the Law Minister feels that such a custom ought not to have the force of law, then we should have a general clause like this here. There are customs even with respect to marriage and divorce which have to be provided against, if they are unwholesome or opposed to public morality, or public interest or public policy. I do not see how you can get out of a general clause like this in some shape or form.

Pandit Thakur Das Bhargava : Sir, if you look into the list you will find that I have not given notice of any amendment with regard to the omission of Clause 4. But I have mentioned it and have given an example in order to know as to what place would we assign to custom in this general clause. I agree with Mr. Mayne when he says that custom is the first rule of decision.

Mr. Deputy Speaker: The arguments are not confined to the restrictions that have to be made so far as clause 4 is concerned.

Pandit Thakur Das Bhargava : I beg to submit with due deference that clauses 3 and 4, where custom is defined, overlap each other. Yesterday, while I was discussing clause 3, Dr. Ambedkar quoted clause 4 in reply. Clauses 3 and 4 are overlapping and the mention of one leads to the mention of the other on account of similarity of context.

As *Sutras* and *Smritis* say

> "*Vedah vibhinnah smrityo vibhinnah naiko muniryasya vacha pramanam, Dharmasya tatvan nihitam guhayam mahajano yena gatah sa pantha.*"

[*Sruti* says something and *Smriti* another. There is no sage whose word can be taken as final. The secret of Dharma (Duty) is very deep. Follow the path traversed by the great.]

I submit that custom has a special place and personal law has no meaning without custom, as is evident from clause 5 of the Punjab Laws Act, 1872. There are many rulings to the effect that custom has a place in personal law. I think while making personal laws we should assume custom to be there. Sir, in the Punjab, in the last one hundred years, all suits pertaining to agricultural communities have been assumed to be governed by agricultural customs. In a suit between urban parties, it is assumed that it would be governed by personal law. In fact, according to decisions of the Punjab Chief Court (107 of 1887, 100 of 1906 and several others), it has become a sort of

law that there is no general custom except where the parties to a suit belong to the agriculturists communities and even in that case the onus of proof of a certain custom falls on the person who alleges it. Viewing the Hindu Code from this point I am of opinion that there should be no undue interference in any custom. Sir, yesterday I submitted that Hon. Dr. Ambedkar was preparing to adopt the customary basis of divorce as provided in Madras and Bombay Acts. I want to oppose this move. You should not spoil our divorce law by adopting that basis as it is the first time that we are making a divorce law. You are interfering in the social economy of upper class Indians. I am in favour of the divorce law. I have no hesitation in saying that we should have a single divorce law for the whole of the country. (I am with you in your efforts for the unification of the country). I know that in Punjab, to which I belong, and other parts of the country, about which I know something, divorce is so easy that there is a saying— "When the parties agree, they need no decree." I do not want that divorce may be had just for the asking ; that will be highly unjust, there is a custom according to which the woman pays up the amount spent by her husband and gets a divorce. I am entirely against this custom, because this seeks to destroy our morality. I am taking up your time to voice my opinion, Hon. Dr. Ambedkar is not listening to me and is busy with his work. You should make a provision for some common and uniform grounds of divorce. Do not allow any custom to interfere in the matter of grounds of divorce or we would be in for a calamity.

I would not countenance the provisions of the Bombay and Madras Acts. I am raising my voice against them not because I am an opponent of the Bombay and Madras Acts for so far as bigamy is concerned, I am as much against it as they are. The amendments of which I have given notice have only one purpose in view, that is, I am not ready to give go-by to the good principles that are contained in our laws relating to marriages, Dr. Ambedkar asked for acceptance of customary basis but every prevailing custom should not be accepted because if that were done, as has been done in this Bill, the whole purpose of the Hindu Code Bill would go to pieces. I want that there should only be one basis for divorce. If the responsibility lies with the husband, he should be required to provide for her expenses till the time of her remarriages. You will find from the Bill that although there is no customary basis for them yet it has been found pertinent

to make many rules that are in accordance with the rules prevailing in foreign countries. We have no quarrel with the rules of other countries. But I am against inclusion of every custom for there are unreasonable customs also. While customary basis has been so much command, I find three words —justice, equity and good conscience— absent. The customs that were immoral have been declared void by our High Courts for they were not just. If there are customs under the refuge of which a divorce is effected under pressure and if it is so proved, the High Courts would declare it as immoral although these customs exist together with others. But these very things that are not in fact based on justice and morality want to come through the backdoor under clause 4. Effort is being made for admittance of customs that would take out the very life of the Hindu Code. We are in no case going to accept them. We must put an end to these things of course. I have no objection for good and useful customs and those that may be very deep-rooted as, for example, the South Indian custom which you just referred, I have thus no objection to Aliyasanthanam Act which has been incorporated in 24(a). But the customs that have harmful effects should be given no place. The Hindu Law says that customs should be followed. In fact, customs are for Archaic society ; but for the advanced society, that keeps pace with the progress of the world, there are some universal principles which the Legislature embodies in the form of Acts and they should be our basis. This is why I emphasize that customs should not be brought in unnecessarily. That is what my amendment seeks to do. The purpose of my amendment No. 446 is to show at what dangerous spot would we reach if that clause were adopted. Otherwise, I have given notice of that amendment merely for discussion and not for acceptance. The rest of my amendments I have already placed.

Under these circumstances I would emphatically request Dr. Ambedkar and the House that justice should be done and nobody should be put to unnecessary trouble. The Hon. Minister may do whatever he likes on the basis of justice, equity and good conscience— he may leave open as much field as he chooses on that basis. But whatever new legislation is enacted, it should be just. Of course, customs should have their proper place there ; but bad customs going against the fundamental prinicples should not be countenanced. We want to give customs their due place. We want to respect them so far as they are against those customs that lead us to immorality because

such a custom is antagonistic to the Hindu *Shastras* and to our principles. There are, of course, differences on the application of divorce provision but I for one support it for I want justice for women who are meted out gross injustice these days. Poet Tulsidas had said through the mouth of Sitaji:

Mitam dadati hi pita mitam bhrata mitam sutah,

Amitasya to dataram Bharatram ka no pujyet.

It means that the poor woman is economically dependent upon the husband and for that reason she worships him. This is, however, not in the interest of the society and is not in accordance with the principles of justice. Tulsidasji should better not have said that Whatever respect we may show towards Shri Ram Chandraji, or Shri Tulsidasji, I am not prepared to keep the women in bondage any longer. This principle of divorce is based upon one's desire and upon the sense of equality and justice. I cannot close my eyes to the injustice that is being done to women. It is a daily occurrence now that young men leave their wives. I would ask them where are these sisters to go ? So I believe that divorce is a right provision. People refer to *Satis*. But has a man ever been a *Sata ?* Indeed, the prinicple of depriving the women of their rights prevailed in a gone-by age all over the world. The Married Women's Property Act was passed in England in 1883.

Shri T. N. Singh (Uttar Pradesh)**:** What is meant by *Sata ?*

Pandit Thakur Das Bhargava : Do you not understand even the meaning of *Sata* ? All women know what is *Sati* but no man knows what *Sati* is.

So my submission is that we should not make provisions on the basis of customs—bad customs surely. We should, on the other hand, take courage to abrogate customs—those old customs that have now beocme out-of-date. The Government should make legislation that should be based upon justice and equality.

Shri Bhatt: Sir, an amendment of mine was left out due to my mistake. If you permit, I may move it now.

Mr. Deputy Speaker: Is it already in the list ? What is the number ?

Shri Bhatt: No. 288 in List No. 5.

Mr. Deputy Speaker: Why was this not moved yesterday ?

Shri Bhatt: I was not present at the right time. When I entered the House, the speech had begun.

Mr. Deputy Speaker: He may move it.

Shri Bhatt: I beg to move.

In the amendment proposed by the hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after "dealt with in this Code" insert "after ten years from the commencement of this Code" ; and

(ii) after part (b) add the *Explanation:*

"Explanation.—Notwithstanding anything contained in sub-section (a), for a period of ten years from the commencement of this Code, any text, rule or any custom to usage in force, shall have effect.

***Babu Ramnarayan Singh** (Bihar)**:** *(English translation of the Hindi speech).* Sir, today you have given me quite early the opportunity to speak on this dangerous subject and for this I thank you. Yesterday and the day before I tried to catch your eye several times and important as the subject was, I failed to get an opportunity to speak. May I make an observation in this connection that there is no doubt that you do full justice in your position about which nobody should have any misgiving……..

Shri Syamnandan Sahaya (Bihar)**:** Nor anybody has.

Babu Ramnarayan Singh : And, indeed, nobody has, But you have to give your rulings with an even hand. Yesterday you were pleased to say that there was some feeling prevalent against you and you wanted that no such feelings be created so that there may be general satisfaction about the working. It is but meet Sir, that thing should be done judiciously. But if somebody worries with the thought that people should regard him infallible on all occasions, he is likely to commit some mistakes. Therefore, I beg of you to do your part justly as you have been doing so far. You should not labour under the apprehension that people might think that you are not doing things rightly.

Shri Jangde (Madhya Pradesh) **:** Please come to the subject.

Babu Ramnarayan Singh: I should also like to say one thing more. When I stood to speak, you in spite of the fact that no Member had expressed that desire declared that sufficient discussion had taken place on the subject and that the question be now put to decide upon the matter. However, I should draw your attention to the fact that the matter is very important.

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3095-3112.

Shri Jangde: The hon. Member must now come to the subject.

Mr. Deputy Speaker: What I would say is it must be left to somebody to deicde whether the debate has been sufficient or not, and the Chair takes the responsibility. I called upon the Hon. the Law Minister to reply. It is no good referring to all those rulings when it is left to the Speaker to decide. I have now given an opportunity to the hon. Member. That was on the definition clause. This is clause 4. If he wants to say anything let him say now. What is the good of saying: "You did not give me any opportunity then" ? All that is not relevant.

Babu Ramnarayan Singh: Sir, whatever your ruling it is acceptable. But I am not saying anything unreasonable.

Mr. Deputy Speaker : What is the good of wasting time over that matter ?

Babu Ramnarayan Singh : That is not the thing. All the Members here have the right to speak, and the subject in discussion here is such that it should not have been brought up at all. To me indeed any punishment given to the Government, who have brought this measure here, and their supporters in this regard would be reasonable. Sir, you Probably do not know that hundreds of persons are daily arrested here outside and released ten or twenty miles away. It is said to be a secular State. Does a secular State give liberty to do all sorts of unreasonable things under the cover of secularism ? This Parliament is meant to protect the rights of the people and you are its presiding officer. These things must come to your knowledge and you should give due consideration to them. What is it after all that police has been posted all round and none can pass that way ? This is very bad and absolutely unjustifiable.

This Bill abrogates all the previous texts of the Hindu Law and all rules and interpretations given in respect of them. I am not talking of customs. (I am simply speaking of text). Sir, you are a scholar and are very well aware that the *Vedas* of our country came to be revealed at the beginning of the world and the establishment of the social organisation. The rules of conduct and duties of men in our country are determined by the *Vedas*. Today we have Pandit Nehru's administration whose representative. Dr. Ambedkar wants to abrogate with a single stroke all those rules which have existed since the beginning of the world. I would say that all the Hon. Members should oppose such a measure. Firstly, the Hindu Code Bill should not pass

at all. But if it has to pass, at least this portion of it, clause 4, must not pass in any case. You know, Sir, and Dr. Ambedkar also knows very well, that Buddhism was preached by Lord Buddha to undo the hold of the *Vedas*. But the *Vedic* religion did not perish. Hardly a few years have passed since the advent of Pandit Nehru's rule and Dr. Ambedkar's coming into office and the *Vedic* principles are sought to be repudiated. Do they not think that such laws should not be passed ? Nobody in the country would accept this law.

Shri Syamnandan Sahaya : Babu Ramnarayan Singh is perfectly right.

Babu Ramnarayan Singh : How could they dare to say that things that have been in existence since times immemorial, since the beginning of the earth and the creation of the Sun and the Moon should now no more be followed ? Wherefrom did they get this right ? Buddhism was preached to overthrow the *Vedic* religion. Other religions including Islam also came. All came and fell, but *Vedic* religion is still there and would remain as such. No one can destroy it and it is an improper and absolutely misguided effort that is being made to efface it. It gives me pain that such things are brought in our Parliament. As our friend Thakur Das Bhargava just said religion and the rules of good conduct were determined by the *Veda* and the *Smriti:*

Veda, Smriti, sadacharah

Atmanstushtireva cha,

Etachchaturvidhah prahus-

Sakshaddharmasya Lakshanam.

The definition of Religion is four-fold ; Veda, Smriti, Sadacharah (good conduct) and Atmatushti (self-satisfaction).

Rules of good conduct were thus fixed in accordance with the *Vedas*. But simply that was not enough. It was also to be seen that what the *Vedas* prescribe, what they command, should also be there in the *shastras, Vedas* set down the path of religion and the *Shastras* supplemented them. But that was not the end all. The rules incorporated in the *Vedas* and supported by *Shastras* should be observed in the conduct, manners and actions of the good people. That is what was meant by the rules of good conduct. But nobody was bound as to their observance simply for the reason that they were laid down by the *Vedas* and *Dharma Shastras* and also followed by good people. In the last, he was to see how far his conscience, his knowledge of good and bad, agreed with them. After consideration of all these factors, his duty was to be finally determined.

10-15 A.M.

Not to speak of the *Vedas* , the *Shastras* and good conduct; not even was the conscience spared ; the Hon. Minister and this Government mean that our conscience be left out and this Bill be passed : and work be done according to it. Just think, what an injustice it means. Need I submit more, you just look up the meaning of the word 'Law' in the dictionary. What does it mean, after all ? You can look up the word in the dictionary, and some of you must have seen it already. Dr. Ambedkar is a scholar no doubt; he must have looked it up in the dictionary.

Dr. Ambedkar: No; I don't look it up.

Babu Ramnarayan Singh : But he puts his scholarships aside and is behaving in a strange way. What is Law after all ? Law today means a supremacy, or a predominant society making a regulation with the help of a military or police and thrusting it on the society as a whole. Sir, Law does not mean this. Law, according to the lexicon, means :— "Law is nothing but the will of the people expressed in terms of Law"—which, in other words, means—whatsoever is the will of the society, is placed in the form of a law and is called a law. These people have now gained supremacy : Police and military are at their command, and with the help of police and military and in the name and with the help of party discipline, they may get anything passed.

Shrimati Dixit (Madhya Pradesh)**:** There is no party discipline.

Babu Ramnarayan Singh : There is party discipline and you will pass it.

Shrimati Dixit: No ; it is not so.

Babu Ramnarayan Singh: Well, what will come out of 'yes' and 'no' ? I know the position.

Sir, I mean to say that a lot of injustice is caused by such a law. It is not in the interests of this country, nor do the people of this country want it, and, therefore, this should not be passed as law. As I told you a number of revolutions took place, great religious revolutions, but the fundamental of the *Vedas* were not changed. With one stroke of pen Dr. Ambedkar now wants the *vedas* an offence, and this Bill should, in no case, be passed. As there are different texts and rules, the interpretations follow them. A number of sages (Rishis) were born in our land. Shri Thakur Das made a mention of them. It has been said :

Vedah vibhinnah Smritiyo vibhinnah,
Naiko muniryasaya vachah Pramanam,
Dharmasya tatvam nihitam guhyam,
Mahajano, Yena gatah Sa Pantha."

Vedas differ and *smritis* also differ. There is no sage whose word can be taken as final. The secret of Dharma is very deep, follow the path traversed by the great.

Which means—One *Veda* gives one dictum, while the other shows a difference of opinion. In *Vedas* there are certain things where people can have doubts. Likewise, there are *smritis* and *Dharmashastras*. All of them are of the same opinion, it cannot be said so. Some *Dharmashastra* gives one thing, while the other gives something else. There also is difference of opinion—"*Naiko Muniyarasya Vachah Pramanam"* —"There is not a single sage whose word can be taken as final" ; No such sage has born, whose dictum could be authoritative and, hence, to be taken as complete truth, and the rest to be discarded. Not even so. But after this those of us who make of a mention of Manu Maharaj—some amongst them say likewise, that Dr. Ambedkar is Manu of the day.....

Dr. Ambedkar : I have not accepted that title.

Babu Ramnarayan Singh : do not accept, please. They say it wrongly, as you, in fact, do not deserve it: this is not a thing to be accepted. Those who confer this title upon you do it by way of flattery. It you are called 'Manu', all of us, too, would like to be called so ; why you alone.

And whatever were the dictates of Manu, whatever were his orders, were automatically followed by everybody. They were not propagated at the point of sword. Whenever he were to sit to make a law no police and military were kept on guard. I go to the extent and say that we should feel ashamed that when such a subject is being discussed we are encircled and guraded by police and military lest somebody should come and interrupt us. Furthermore, it has been said :"*Dharamsya Tatvam nihitam guhayam"*—The secret of *Dharma* is very deep it is hidden in the caves. Sir, everybody does know that these people must have thought at times that the subject of *Dharma* was so difficult that it could not be understood. Its secret, which is said to be lying in some cave, is very difficult to find out. How beautifully has, therefore, been said : "*Mahajano yena gatah sa panthah*"—"That, indeed, is the path which was followed by great men." In such circumstances, when *Vedas* say something, *Shastras* uphold something else, conduct rules ordain something else and it may become difficult to make a right choice then what should be done ? It is, therefore, said : "*Mahajano yena gatah Sa panthah*"

—i.e., whatever is done by the great should be followed. Those, who are called great in our country today, are doing and out to do such things as are not acceptable to anybody even today. Who will accept them in the days to come ? I beg to submit that this subject should be considered in a definite light, and in such a way that everybody may get an opportunity to think and have his say.

Sir, about usages and customs they say that custom should not exist. These people are prepared to do away with customs and will surely do away with them. They should know that the Scriptures, *Vedas, Puranas* were not introduced at the point of the sword or by any kind of coercion. Those were such regulations as were be acceptable to any body when formulated. Some give the name 'customs' 'family-customs' some name it as 'family conduct' while others call them 'customs and traditions.

At a certain place in Ramayana it is said:

"Raghukul riti sada chali ayi,

Pran jahin par vachan na jayi."

(Raghu Dynasty has its ever-present custom. Life it will give, but not discard the word.)

It was a trait of the Raghu Family, yes—a tradition, a custom : Life should not be cared for, it should even be sacrificed, but the words given by them should in no case, go futile. What need I say today ? Cheers to the talent of Dr. Ambedkar or the talent of this Government which tells us not to talk of customs and to do away with truth and customs. They say, all the customs and traditions should be done away with. This is just a thing to be understood as to how important the customs were *"Raghukul riti sada chali Ayi, Pran Jahin par Vachan Na Jayi"* Just look to it that the man who seeks to become our Manu today, says that there should not be any custom nor traditions whatsoever; we should do away with all of them.

Shrimati Dixit: But what is happening today ?

Babu Ramnarayan Singh : If your will were to carry the day, the words could happen. Now comes to question of divorce. In our country, there are some five or six such communities which we know are not more than two to four crores in number. For them they are making this laws so that the right of divorce for them may be secured. In the rest 90 per cent of the society, we know that divorce is a thing of daily routine. And, sir, how is this divorce given ? Two, four or

five of them sit together, both the contending parties come and they break some stalk of grass ; and their mutual realtions are broken—this completed the "divorce". Not a panny as to be incurred on this, nor any botheration. Our Hon. Dr. Ambedkar is a well-wisher of the Untouchables and they too should know that such well-wishers should be shunned. Now all of them will have to go to the district judge for divorce, what a lot of expenditure arid botheration will this procedure mean ? Then alone will divorce be granted.

Shri Naziruddin Ahmad (West Bengal)**:**..... A decent work for lawyer !

Babu Ramnarayan Singh: Lawyers giving maintenance to lawyers !

Pandit Thakur Das Bhargava : The *Panchayat* is being empowered to register the divorce.

Babu Ramnarayan Singh : Well, even if it is in the hands of the *Panch,* it is right to some extent, but that too will be a Government Post. I assert that the Bill be scheduled. Let this law go to hell and then you will see how easily the entire system work. We have *panchayats* and *panchas;* and in our country customs and usages are pliable they will continue to hold good and people would accept them automatically. If any law is formulated or any decision taken, it should be so clear and precise as may be amiably accepted by people, and they may not think of going against it. But the law that is being passed here, is such that people in our country will take pride in breaking it, and will not act upon it. This is nothing but a whim of those who today have gained power. They are obstinacy-ridden and say that the Bill must be passed somehow. What the country thinks, and what she needs, the Government never worry about it. What is being spent for it here, and what, after all, is its necessity, nobody cares for it: the Government go on spending money lavishly and thus ruin the country ; go on passing baseless and futile laws against the will of the public. I insist upon our Rajaji and Dr. Ambedkar that the Bill be withdrawn : the country does not want it, and the good of the country, good of us all, lies in its being withdrawn. This simply astonishes me that such an injustice is being here where personages like Rajaji are present. There can be nothing more shameful and sorrowful than this.

Sir, I do not want to take more time but I want to request you that the subject is so serious that it needs a proper debate ; and if

any hon. Member wants to speak on it, he should be permitted to do so. This Bill has created a stir in the entire country as also in the City, and hold that the Bill should not be proceeded with. The Government should withdraw it, and if it is not withdrawn, but proceeded with instead discussion in a proper way be conducted and the hon. Members be not stopped from speaking on it. I would request all the hon. Members to understand all the pros and cons and pass it, then. They may also bear in mind that the good of the country and the society be not impaired in any way by this self-willed piece of legislation, and I again submit with respect to all the hon. Members, that this clause at least be omitted.

Shri Sarwate (Madhya Bharat)**:** I rise to oppose the amendment of Dr. Ambedkar because I consider part (b) of the amendment as unnecessary and superfluous while part (a) is quite undesirable.

Dr. Ambedkar : You may abuse me as much as possible, provided you do not take much time. I am concerned more with the time than with the abuse.

*** Shri Sarwate:** Sir, I am not abusing him. I am only opposing his amendment. If not interrupted, I shall take very little time.

I submit that by virtue of article 254 of the Constitution, all laws made by the State which are repugnant to or are inconsistent with the laws made by Parliament stand *ipso facto,* to that extent, inoperative. The other laws which may possibly be referred to in this connection are laws made before this code by the Centre. In their case the later law will precede the previous law. Therefore, in both the cases, that is, in the case of laws made by the Centre, they would, to that extent, to which they are inconsistent to the code be *ipso facto* inoperative. Therefore, I say part (b) is unnecessary and superfluous. As regards part (a), the effect of this amendment would be that all customs and all texts or rules or interpretation of Hindu law and customs would be made inoperative, subject to the saving clause at the beginning, namely, all such customs as would be saved by being included in any of the later provisions. My submission is that this is entirely undesirable. The Hindu religion has been living and progresssing. It has been said that it is dying and decadent. It has been compared to the shameful life of a coward who flies away from the field of battle. I would only submit that it is often ignored that one who fled

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3103-7.

from the battle field may return only to vanquish those who erstwhile were the victors. It must be remembered that the Hinuds have reppelled those who were for a time, and only for a temporary time, able to overcome them. In the last century the Marathas in Maharashtra from where Dr. Ambedkar himself comes, and then the Sikhs in the north were successful in achieving their independence and establishing their kingdoms. But I need not go into past history either ancient or modern. In our own day and before our own eyes, we have seen this accomplished. Have we forgotten that the present Parliament of which Dr. Ambedkar is an illustrious Member is the result of .....

Dr. Ambedkar: I have no right to be here. I have sneaked in.

Shri Sarwate : I wish he makes no confession of that nature.

This very Parliament is an illustration that the Hindus repelled the foreigners who had dominated over them temporarily. And what was the element or factor which gave this like or this rejuvenating characteristic to the Hindu religion ? In my opinion, it is custom and by custom I mean such custom as is defined and accepted by this House in clause 3—custom, which is a rule that is certain and not unreasonable or opposed to public policy. It is said that custom might be of a bad nature and therefore it requires to be mentioned here. But to say so is contradiction in terms : just as contradictory as today वंध्यासुत For custom is defined here as that which is not opposed to public policy. Therefore, such customs as are opposed to public policy or morality, they will stand, *ipso facto* repealed. Those customs alone will be saved as would be good customs.

The House will realise that the sources of Hindu law have been described as:

श्रुति स्मृतिः सदाचार स्वस्य च प्रियमात्मनः ।

First of all the *Srutis* and *Smritis* lay down the fundamental common background. And then सदाचार and स्वस्य प्रियम् provide for variety, that is to say the element which would suit the various regions of the country. It has to be borne in mind that India is a continent in extent and its population is equal almost to the population of the U.S.S.R. in the East and to the U.S.A. in the West put together. So unless there is variety of the law, the law would be absolutely oppressive and it would be difficult to make it suit the various requirements of the different regions.

Now I would refer to another text of Hindu Law—I mean that law as it prevails at present. Yajnavalkya says :

यस्मिन् देशे य आचारो व्यवहारः कुलस्थितिः । तथैव परिपात्यो सौ ॥

That is to say, whatever customs, practices or family usages prevail in the country shall be preserved intact. And the *Vyavastha* or rule in this connection is stated thus :

येषां परम्परा प्राप्ता पूर्वजैप्यनुष्ठिता । त एव तैर्न पुष्येदुः आचारैर्नरे पुनः ॥

They are not liable to censure, whose predecessors used to practise these usages. In modern language, it means that the customs are ancient and from time immemorial. And others which are not so would not be observed.

So with this *Vyavastha,* the Hindu religion was vitalising itself and adopting itself to different regions.

Now, I shall take a small illustration and show that if we entirely do away with customs by accepting this amendment what would be its effect. There are many reasons why the amendment should not be so accepted. First of all, I trust even the learned Law Minister is not conversant with all the good usages that are prevalent in this country from Cape Comorin in the south to the Himalayas in the north. Neither are the Members conversant with all of them. And even if they are, they would not be in a position either to convince the learned Doctor or to convince the other Members of the House of the utility or significance of those usages and of the importance in which those usages are held in particular parts of the country. Therefore, I tried in an amendment of mine, which was for a technical reason not accepted or not put forward, to provide a simpler device by which the local Legislature may be able to supplement this law. That, however, has gone. Therefore, I submit that because of ignorance of all the good usages in the country we should not say "save as otherwise provided in the provisions ……". The effect of this saving clause will be nil and part (a) of the amendment will do away with all good customs, whether they are repugnant or not to the law.

According to part (b) only those laws which are inconsistent with the present law are only repealed, whereas in the case of customs, whether repugnant or otherwise, they have all been abrogated. This is a very wide provision which should be lost if it is omitted altogether. A custom is governed by all the requisite qualifications mentioned in clause 3, which the house has already passed and laws would be governed by article 254 of the Constitution.

I shall now take one more instance. Marriage is after all a social institution, meant to satisfy a social need. If social circumstances vary to a great extent in various regions of the country, several provisions would have to be made in the law which is to be enacted. In the present Hindu Law this is achieved in two ways. There are firstly various schools of Hindu Law. There was the law of *Dayabhaga* and *Mitakshara*. The common background is the Yajanavalkya's and Manu's *smritis*. The variety was given by *Dayabhaga* and *Mitakshara*. Further there were in मिताक्षरा various schools which governed different parts. There was the Mithila school, the Banaras school, the Madras school and the Maharashtra school. This was one of the ways in which variety was provided in Hindu society, which I maintain will for that reason never die. Secondly, there was the achar and on account of this the Hindu Law and religion have been progressive and satisfying the needs of all, which were this vitalising factor. It is the variety which, added to the common background, has kept the religion alive throughout the century. Invaders have come and gone, but Hinduism is still progressing.

I shall now take up the question of monogamy. Irrespective of what the law givers lay down, society would adopt monogamy or other systems of marriage according to its needs. Good law givers therefore ought to provide for this varying need. One of the factors which govern the form of institution of marriage is the ratio between the males and females. If there is an equal ratio between the sexes there will be monogamy and society is bound to be happy. But if there is very great disparity between the sexes then society will have to adjust form of marriage accordingly. If females exceed the number of males then bigamy or polygamy would have to be allowed. Otherwise the result would be either adultery or increase in illegitimate children.

Shri Naziurddin Ahmad: Adultery is permitted by this Bill.

Shri Sarwate : I will not take notice of it. There was a common phenomenon which had been observed during the war. When in U.K. the adult male population went to the war fronts there remained behind in the country an excessive number of women and the result was a great increase in the number of illegitimate children, which has now become a very difficult qustion for solution. This phenomenon has occured in other countries also. So also if the number of men is much more than the number of women then poliandry would come

in, in one form or another. Even in that case the same result would follow, I am in favour of monogamy, both because it is a law of nature and society has enjoined it and it is in accordance with modern trends. In that respect fortunately in India the ratio between the sexes is equal but even here there are certain other factors which have to be taken into consideration. I have some figures about the ratio in the different provinces. These figures show that the ratio in Madras and Bombay is equal.

Dr. Ambedkar: You are pleading for polygamy ?

Shri Sarwate : Let me proceed. In Bengal and some other provinces the males are preponderating and the females are less. So if you provide only one form of marriage for all these provinces it may not do.

Shri Brajeshwar Prasad (Bihar)**:** Has my hon. friend studied the ratio between the different age groups—the males between the ages of 16 and 35 and the proportion of females between the ages of 16 and 35 ? That will throw light on the question whether there should be monogamy or polygamy.

Dr. Ambedkar: He wants you to study the proportion of the different age groups among the sexes. But why do you not leave the argument to younger people ?

Shri Sarwate : Every body has to do his work. Dr. Ambedkar has to do his work and I am doing mine.

To proceed with my argument, it is irrelevent or unnecessary for developing my argument to show what the proportion of the males to the females in the different age groups is. I want here to show that in different tracts different conditions prevail and would have to be provided for as has been done in the prevailing Hindu Law through the different schools and through the *achar*. This is a case where it is absolutely necessary that variety must be provided for and it can be done only by allowing customs, customs which are ancient and are governed by public morality.

I conclude with this observation, that this amendment is entirely unnecessary. Sub-clause (a) is undesirable and sub-clause (b) is unnecessary. Therefore, this clause should be entirely dropped and the amendment disallowed.

***Dr. C. D. Pande** (Uttar Pradesh)**:** I rise to speak in favour of omitting the clause which seeks to abrogate the validity of customary

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3107-12.

law. I think this clause enlarges the scope of the Hindu Code. Let me go briefly into the genesis of the Hindu Code Bill. What was the necessity of this Bil ? If you know the background you will know how absurd it is to maintain this clause in this Code. The genesis of the Hindu Code Bill is that there was a constant demand, and there was a feeling in the minds of the leaders of the Hindu society, that there must be a law to be in conformity with the civilised concept of human society. There are only two things for which a case has been made out conclusively and we stand for them : one is acceptance of monogamy, imperatively and without exception: the other thing is that those who seek divorce in certain cases of hardship should be able to get it, that there should be no difficulty in that process of separation, annulment or divorce. These are the only two things for which a case has been made out and I do not see if any similar case has been made out for the abrogation of the validity of customary law. Have you ever heard of a single representaton or of a single meeting of the people who are governed by customary law, that this law should be changed, that it should be brought in conformity with the strict law of Manu ? Or, have you heard that they are tired of their customary law and they want to come within the orbit of Manu's law ? No : I have not heard of one single reprsentation or of one single meeting, either in the Press or on the platform, demanding that. There has been a constant demand for improvement in the law as far as monogamy goes, and also as far as divorce goes. People say there is a slur on our name in foreign countries. Well, that may be so; for that we have now accepted the prinicple of monogamy and of divorce. But I do not like that in the garb of making changes in the Hindu law you should introduce things which are absolutely detrimental to the interest of more than 80 per cent of the people of this land. If you analyse the population of this country, how many people, will you find, governed by Manu's law ? Only a handful of Brahmans, Kshatriyas and Vaishyas. But even they are governed by local laws as well and local laws have got an overriding position over Hindu law. Hindu law was originally not a textual law but a customary law and it was codified by Manu, Yajnavalkya and others in course of time.

Difficulty was experienced by the Legislature of India in the course of the last 100 years in these matters, and they made certain laws about specific drawbacks which were thus removed. Now the demand has arisen for change with respect to monogamy and divorce. We

concede it, but how do you presume that there is a desire for change so far as customary law is concerned ? What is customary law ? It is a natural law, it is a dynamic law, it is a growing law, it has got the force of the needs of the time ; if you do not allow that growth, that dynamic character in the society you will become rigid, you will be doing harm to the Hindu society just as Manu's law has done harm, according to you in the course of the last 3,000 years. Do you want that this should be perpetrated in the vast sections of the society which is not governed by that law ? This House stands for the principles of monogamy and divorce. Now in the progressive age you want to create hardships in the matter of those very things in respect of which you want to give facilities ? it is absolutely inconceivable to me that you desire to do so. It will be a retrograde step.

There is another reason for customary law being maintained. It will be impossible for the State to maintain adequates number of judicial officers and magistrate to deal with cases of divorce or judicial separation. (*An hon. Member:* Government have enough money.) They do not have enough money even to maintain magistrates to try ordinary cases, which are pending for several months together. You have no idea as to how many more magistrates will be needed. Even if you have money and you are bent upon doing it, do you know the hardship involved ? The cost may be ignored, but the hardship cannot be ignored, because in this country unfortunately whenever a citizen comes into contact with Government machinery he is subjected to vexations at every step. I myself have been a functionary of the Government and I have a clear idea of these things. I had some influence, but if I were an ordinary non-official and I went to a court of law, I know how much attention I would receive. An ordinary citizen finds it difficult even to get a ration card. Do you think it will be easy to get a divorce certificate in a court of law for a person who is ignorant and poor ?

11 A.M.

Pandit M. B. Bhargava (Ajmer)**:** Courts will be more efficient hereafter.

Dr. C. D. Pande : Things should be accepted as they are. You cannot expect to improve things all of a sudden. There is no justification for creating hardships. Why do you want to abrogate the customary law ? Have you received any representation for the abrogation of customary law ? Why do you insist on it ? Why do you insist on creating difficulties ?

Shri A. C. Shukla (Madhya Pradesh) **:** Because it is against public morality.

Dr. C. D. Pande: Let not morality be governed by law ? If you have any illusion that you can govern people's morality by law, you are mistaken.

Shri Lakshmanan (Tranvancore-Cochin)**:** He is not addressing the Chair. He is addressing individual Members as 'you'.

Dr. C. D. Pande : I am sorry. It is a manner of address to say 'you'. 'You' does not mean an individual Member. It means the Legislators here.

Mr. Deputy Speaker: No interruptions please.

Dr. C. D. Pande: I do not mind the interruptions, because the case that I am putting before you is sustained by the will of the people outside. I know the people. I know their difficulties. I know the prevalence of the customs. The difficulties that will be created will be enormous. You have not got the machinery to deal with the cases. The cases may be in far off places where there will be no Government machinery. People manage their affairs in an automatic manner. There is an automatic adjustment in social affairs. That automatic adjustment of the society will be disturbed. You wish to take upon yourself a responsibility for which you are not prepared. Moreover it is uncalled for. There is no justification for it. No case has been made out for the abrogation of customary law. A case has been made out for making divorce easier, not for restricting the scope of divorce. Why do you want to enact legislation which is not in consonance with the likings of the people and which goes against the very spirit of this Code ? This Code seeks to confer divorce and you want to restrict divorce. If this contention has any validity, then I submit the Law Minister will consider the matter carefully and sympathetically.

***Shri Oraon :** (*English translation of the Hindi speech*) Sir, I had not to speak much about this Hindu Code Bill; but we are now confronted with a situation which compels me to speak something. I mean to say that Scheduled Tribes and Abroiginals are neither Hindu nor Muslim nor Christian. They are without any religion. First they were not included in this Bill nor did they want themselves to be dragged into it. But now I find that we too are being dragged into this Bill. I want to say that the divorces which take place amidst our Community, perhaps do not take place in any part of the world. We know that not less than 80 or 85 per cent divorces take place before

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3112-13.

any child is born as a result of the marriage. If some action is to be taken there or a divorce is to take place, we shall be handicapped in getting the case recorded with a *Panch*. It is said that the case will have to be recorded in our own *Panchayats*. The *Mukhia* of that place will go to the court and apply. If either of the two—man or woman, who come for divorce do not agree to his decision, the case will proceed further and move to the court. We know how many divorces take place. Not even in 18 months will the cases registered in only twelve months be decided. Dragging us into the Hindu Code Bill, therefore, is not only injustice but our virtual death. I would request the learned doctor, therefore, to exclude us from it.

Next, whatever we see in the Hindu Code Bill, is both good and bad. May be, people living in the cities may not know this, but we are villagers and come across people of all types. All of them are against it. In this state of affairs we see that on the part of the members of the Parliament, the representatives of people as they are, this will not be a right course of action nor will it be right on the part of the Government to pass this Bill. It is, therefore, I must say that this Bill should not be passed unless new elections are held.

***Shri Jangde :** (*English translation of the Hindi speech*). Sir, I have been listening to the speeches of the Hon. Members for the last four or five days. From their speeches it appears to me that clauses are not being considered, but that general discussion has started.

I wish to recount the objections raised by the hon. Members against this Marriage and Divorce Bill and I consider it my duty to reply to them.

Just now Shri C. D. Pande said that a loose custom of marriage and divorce prevalent amog 90 per cent of the people should be left intact. He also asked why should the *Dwij* communities, among which this divorce custom does not obtain, be compelled to adopt it.

Pandit M. B. Bhargava: He did not say this.

Shri Syamnandan Sahaya : This was not said. Why are you unjust to him?

Shri Jangde : He said that this matrimonial code, which is going to be passed, would greatly lengthen the procedure of marriage etc. and would create many difficulties for the village people.

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3117-20.

Babu Ramnarayan Singh: He came only to give a sermon to us. He did not speak on any clause in particular.

Babu Ramnarayan Singh: You deserve it.

Shri Jangde: I have been doing work of social reform among these 90 per cent of the people and I know them thoroughly. I know their marriage and divorce customs very well. The people who are speaking on their behalf do not know them. They speak only to place obstructions in the progress of this Bill. It has been said that easy divorce is a very good thing. I want to tell you sir, that the custom of divorce among the *Shudras* has become so old and useless that it is being highly misused. Today the honour of our mothers and sisters is at stake on account of this. They are sold in Calcutta and Bombay and they embrace other faiths. Today among the *Shudras* a woman does not enjoy even as much respect as a cow does. A cow is sold only once, but women are sold many times. The custom now prevailing among them has become the custom of the high-handed and is no longer the custom of the poor. You say that if this custom is abolished, people will have to incur much expenditure in the Law Court, but I cannot help praising the wisdom of Dr. Ambedkar who has suggested the remedy that the decisions of the *Panch* of the caste shall not be binding until the sanction of the Government is obtained. Today what we do is to marry, perform the custom of *Saptapadi,* and to sell her (the wife) after two or three days. People become ready to sell and divorce her. In this case, what is the meaning of sacramental marriage and *Saptapadi* ? The old customs have become rotten. You want to maintain them. You want to keep them in the name of Hindu religion. But I want to tell you that 90 per cent, people of Hindu society are becoming opposed to them. Women are not shown any respect. They are labouring under difficulties. You say that we regard them as *Devis* and *Saubhagya Lakshmi,* but this is all wrongly put by you.

Just now some hon. Members said that they did not want divorce for the *Dwijas* and why should they be compelled to adopt it. This is the opinion of many of the hon. Members. You want to place the lion and the cow in the same category. Should the hunter and his prey be placed together ? Do you want to unite the East and the West ? They can never meet. On the one hand you say that there should be no divorce among the *Dwijas,* on the other, you say that loose divorce should be maintained among the *Shudras*. This anomoly is

leading to a fall in our moral and human standards. The Hindu Code has been drafted to reomve this extreme kind of discrimination and to bring the *Dwijas* and *Shudras* from Cape Comorin right upto Kashmir together. You want to spread the awakening among the Hindus. I say that the Hindu Code Bill would be a great help in this direction. You do not want to show the same sense of moral values which has been shown by Dr. Ambedkar in drafting this Bill. In this connection I wish to say that if there can be any means of bringing the *Dwijas* and the *Shudras* together, it can only be the Hindu Code Bill. You say that it should be applied only to those who want it, and those who do not want it should not be compelled to adopt it and none should be forced to adopt monogamy and divorce. In my opinion propaganda has been done in the wrong manner is this connection. Government have no money and they do not want to do propaganda in this respect. Not the supporters, but the opponents of the Hindu Code are doing forceful propaganda. Once I heard that Karpatriji said in a speech that it could even make marriage between father and daughter possible. Similarly other false propaganda is being done. It is said that it would lead to marriages between brothers and sisters and the Hindu religion is going to pieces. I say that the diseases which have crept into Hindu religion are being sought to be removed by treatment. This is the aim of the Hindu Code. Such a propaganda is being done in this connection. You say that you do not want divorce, but on the other hand, you want that it should be introduced for us. Among the *Dwijas* a married woman who becomes a widow, cannot be re-married in any case but men can marry a hundred times if they like. This is no justice. Just as Rama married once .....

Mr. Deputy Speaker: You leave Rama aside.

Shri Bhatt: He should be allowed.

Shri Jangde : I was speaking of the evil custom prevailing among the *Shudras*. We want to change it. Every person can marry five or six women. In no home are women married according to *Saptapadi* are found. They go away with the high-handed persons. By changing their women repeatedly they incur much expenditure. More than half of their property is spent in marrying these women. Is it justice that a woman married to a man should go to another ? This Bill in which you see the end of the Hindu religion has been introduced to remove these evils. Therefore, without taking more time I would like to submit that if you want to see the renaissance of the Hindu religion, if you

want to maintain it and bring the *Dwijas* and the *Shudras* together, the amendment in respect of Marriage and Divorce clauses of the Hindu Code Bill should be accepted.

***Shri T. N. Singh :** (*English translation of the Hindi speech*). Sir, I am delibratley speaking in Hindi, because some of the hon. Members and particularly shri Oraon, by speaking on the Hindu Code Bill in Hindi, have in a way asked us to do the same. We have one thing specially in mind while discussing this particular clause 4. Dr. Ambedkar has certainly tried to take a place in the galaxy of Manu. Parasher and Yajnavalkya by following in their footsteps, but I believe that it is an unjustified effort on his part because our traditions have gradually evolved according to the dictates of time and circumstances. They are formed on the basis of collective wisdom and experience. Therefore, the wisdom of any particular individual cannot affect them. What I mean to say is that we cannot violate our traditions so simply and so easily. We perhaps do not even know all of these traditions. I would challenge Dr. Ambedkar, our Minister of Law, to state how many traditions of ours, which he wants to destroy completely through this Hindu Code, are there in this vast country of ours, in the Bharatvarsh. How far is it proper for him to say that these traditions which he perhaps does not know of should be completely destroyed ? Therefore, you can make efforts to follow Parashar or Yajnavalkya or any other lawgiver (*Smritikar*) but, for god's sake, do not make this wanton assault on these traditions.

Sir, I would like to tell you that a good many traditions are being followed by innumerable people in every corner of our country. They are perhaps being followed on a higher level of morality that what was obtained by Manu, Parashar or any other *Smritikar*. Can anybody today say that in that section of our country to which our Shri Theble Oraon has the Honour of belonging, many things, many traditions, many laws are not such as are highly superior to our laws ? In my view this divorce (perhaps there is no one word of it in Hindi). (*An hon. Member: Vivah-Vichheda.*) You may say *Vivah vichheda,* but it is not one word anyway, the rules in force there in this regard are far superior to the rules in our Code or rules found anywhere, in England, in America or elsewhere. In our opinion it is not proper to curtail them or to boast that this Code or this measure is better and should replace them. Therefore I would appeal to our Government,

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3126-28.

to our Hon. Minister of Law that it is improper for us, being ignorant of the traditions, to deal with all these traditions in this manner. Secondly, it is not wise to destroy completely these traditions and specially when they do not go against any rule or Bill. I have heard that in some cases in some parts, these customs and traditions are being given their due place. But no amendments have come before us in regard to them.

An Hon. Member : Amendments regarding marriage have come.

Shri T. N. Singh : But amendments regarding other things have not come, perhaps they are about to come. I welcome them. But at the same time I would submit that it is not correct to make laws for them in a sweepig manner with a view to eradicate them. That is why I oppose this measure particularly. If you were to read this clause, it will be found that the words 'any other laws in force' have been added to the clause now framed i.e. any other law or Act which is inconsistent with it would also be repealed and would not be applicable. In that case, would it not be proper if you also said in regard to these traditions that the inconsistent things would not be applied and any coustom or tradition going against any of its principles or basic aims would not be applicable. If so, it would have been understandable. But to say that no tradition would apply is not fair and I believe that it is essential to change or amend it carefully. I do agree that many of our traditions are inconsistent and are perhaps not accroding to the times. According to some of the current traditions, an aged man of 60 or 70 can also marry. But it is regretted that this is not incongruous with the Hindu Code. What I mean to say is that if you have to axe any tradition, axe such traditions.

Shri A. C. Shukla: Those regarding dowry.

Shri T. N. Singh: Yes, there are many others, like widow remarriage etc. You made scores of laws regarding them and did many things, but did we succeed through them ? That is why I say that every tradition should be thoroughly studied. I am opposed to removing all of them. I do not mean that none of our traditions is wrong.

Shri A. C. Shukla : May I ask a question ? How will you determine that a particular tradition is good or bad ? If 75 per cent, people of a community want a custom to be retained, should their view be accepted, and should the customary law, as stated by Shri Jangde, be reformed ? Everybody wants reform of the bad customs. Therefore, let us know how it should be determined.

Shri T. N. Singh : The question put by Shri Shukla is very simple. It is not you or I who reform the traditions. It is done by the whole society, the whole community, according to the dictates of the time and it can never be said that all traditions have remained unchanged. All of them have undergone changes. But I say that when we apply our individual judgment as against our collective wisdom, it becomes our duty to study them fully. That is all I have to say. I do not say that no customs should be changed, but we should change them with our collective wisdom. We have the right to do so in this manner, but we should not do it through legislation. This is what I want to say.

Shri A. C. Shukla: How ?

Shri T. N. Singh : Many of the traditions which you regard as bad get changed by the pressure of public opinion. Many others change according to the dictates of time. It is said that at one time when a child was bom in sparta, it was thrown away. If it could survive one day and one night, it was brought back and given a lease of life. This is correct. There was a special necessity for that tradition at that time. These traditions change with the times as the needs of society change.

Dr. Ambedkar: You are arguing a bad case.

Shri T. N. Singh: I do not understand this. When I believe that you are making a vain effort, you might think that I am supporting a bad case. The thing is that you do not have full knowledge of our traditions. Only after studying them completely you might change them and those traditions which are very good, whether they are sustained by this Code or not should .....

Shri A. C. Shukla: Are they recorded ?

Shri T. N. Singh : We live in this country and know them. It is, therefore, improper to axe these good traditions and I would like that either this clause should be removed altogether or it should be adjusted in the next clause. It should be considered after that, that would be proper. To pass it just now in this form is not proper.

***Ch. Ranbir Singh** (Punjab)**:** (*English translation of the Hindi speech*) I have risen to support amendments No. 420 proposed by Pandit Thakur Das Bhargava and No. 288 of Shri Bhatt. Shri Bhatt by his amendement means that if some customs or usages clash with

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3142-50.

the Hindu code Bill, then that clash should not be regarded in the light that the custom is abolished, but it should be allowed to continue for ten years and after that period it should be regarded as finished. Amendment No. 420 by Pandit Thakur Das Bhargava means that those customs which are in accordance with the Hindu Code Bill should be regarded as abolished ; and those customs which are left, their power or their legality should be retained. Whatever has been said by my learned friend Shri Pande, I agee to that and this thing is right and very much heartening. The real purpose of the Hindu Code Bill was considered to be that this Bill was being brought forward to introduce some reforms in the country to remove the prevailing social evils from the society and to bring about some changes in it. How many people would be affected by it has to be taken into consideration and as he said I regard the imposition of this Hindu Code Bill from the backdoor upon those people of this country who were free from it uptil now, as an act of abuse of power.

Shri A. C. Shukla : Even if they do not want it they must have it.

Ch. Ranbir Singh : Shri Shukla has not understood the meaning of the word imposition used by me, or he has not heard it properly. If he says that the imposition which I have said is wrong then perhaps I would like to know from him whether he can quote any example in which any person from the Punjab, may he be a Hindu or a Sikh or a Muslim, has ever raised his voice that their customary law should be abolished and in place of that they should have the law of Manu, or of Yajnavalkya or of anybody else.

Shri A. C. Shukla : When they will become educated they would demand that.

Ch. Ranbir Singh: Perhaps Shri Shukla does not know how dynamic personalities have born in our Punjab who have challenged the authorities of our country, although, I do not support them but this is an historical fact that during the recent years nobody had been able to defeat a Congress candidate in the Hindu majority areas, but in the Punjab there was a constituecy in Haryana, which is a Hindu majority area, in which Ch. Chottu Ram had defeated a Congress candidate.

Dr. Ambedkar: Ch. Chottu Ram was a great friend of Hindus.

Ch. Ranbir Singh : In case the Hon. Dr. Ambedkar has got any document or any other proof about it, I am ready to accept that. But

as far as his objective is concerned I am not opposed to that. I am a supporter of monogamy and I want that in some special circumstances arrangement for divorce should also be made so that when some difficulty is felt on both sides, by the man as well as by the woman in living together, a way must be found out to save them from that difficulty. But along with it I cannot help saying that this attempt is nothing but an act of abuse of power, because we should have applied this Hindu Code Bill to those only who wanted to be governed by it.

Since this question of Hindu Code Bill has come before this House, it has taken several months and many a day has been spent upon it, I tried hard to snatch some minutes so that I might express my views about it, but unfortunately I could not get a chance. Unfortunately, when Sardar Man spoke about it, instead of coming to the right thing he got himself entangled in the labyrinth of the Sikh religion, perhaps he might have thought that in this way his point would be more forceful or there might have been some other reason. However, I think that this question is not related so Sikhism alone, this is a question pertaining to the customary laws of the whole of the Punjab. I want to bring to the notice of the Hon. Dr. Ambedkar that even in such a time when such Brahmanic rules and regulations with regard to the living customs of the country and the society were being enforced rigidly, *viz.,* one could not go in a particular direction on Mondays or on Tuesdays or on Saturdays, the martial race of the Jats in the Punjab, to which I and the Hon. Sardar Baldev Singh belong, did not yield to the Brahmanic rules and it has not done so even now. I want to submit that really in our society there is no likelihood of any appreciable opposition to the two provisions relating to monogamy and divorce, and I am not personally against them, but I am opposed to the method and manner which you are resorting to. And the manner or the backdoor method through which it has developed is not a proper one. This is not because I regard myself a Non-Hindu but I do feel that we have never been governed by the Hindu code and it has never been enforced with ragard to us. I doubt your intentions that you can govern by the backdoor policy those whom you could not enslave mentally. I disagree with you to a great extent with regard to the rules and regulations which you are enacting in respect of marriage and divorce without caring for the prevailing customs. I want to state with respect to this that many reformers of society have done a great many reforms in the Hindu Society with regard to the widow's

plight but I want to point out that a young widow has remained an unknown thing to our society from times immemorial. Our society does not know the name of a young widow, because it is a custom in our community that when the husband of a woman dies, then after a year of his death the brothers and parents of the widow and the relations of her late husband meet together and in spite of the shyness, as is common everywhere in our Hindu society, and against her formal wish, that she would herself bear the distress that has befallen her, and in spite of her refusal, she is told that this is not possible. It may be said that her ideal is good, but how many people are there who can follow such a high ideal ? The people of our society doubt whether such a lofty ideal which you are going to establish in our society would not create any evil in our society. Therefore, you should recognise our simple custom of remarriage and not invalidate it. So I wanted to support the proposition laid down by Shri Bhatt. Now I mention the reasons for that.

On the one hand where your rules and regulations wanted to reduce the troubles of our womenfolk, and they have reduced them to a great extent, on the other hand their troubles have been increased manifold. And that is because you have given them a sort of right to marry wherever they want. In the ordinary way, if no extraordinary trouble arises it would easily become a custom that they could remarry, but why do you lay dow this restriction ? Generally people are not bigamous of their own will but they are forced by circumstances. If a brother dies, his brother has to concede to the custom of bigamy against his wishes.

Shrimati Dixit: I want to ask you a question. There is a woman, who has got four or six children, there is her husband's brother's wife, she also has got four or six children. If they are made to live together would not the co-wifely feeling create trouble between them ? Is it not unjustifiable on principle to force a woman to marry another man against her wishes ?

Sardar Hukam Singh (Punjab)**:** By the will of god.

Ch. Ranbir Singh : If you mean remarriage by that, I would say no : remarriage is possible only when it is regularly sanctioned by society, but there are many women who cannot express their desire. After thirteen or fourteen days of his wife's death a man may express it, but the women cannot do so due to the peculiar set-up of our society such a thing is impossible, and ample time is required to change that.

But if she meant this that if there is a brother, who has got two or three children and a wife and he has a brother who is about to die, and he also has got two or three children and his wife, that they are made to live together it would create dificulties and trouble would arise. If she wants to know about that, I am coming to that point also. I confess it and everybody in our society would confess it that nobody resorts to bigamy willingly and that the woman is also helpless, because she loves her children and she cannot leave the two or three orphans, for where could they find shelter. She cannot say that she wants to remarry and the other members of the household also cannot leave the children, then the question arises whether she should take her children with her. But this is a custom in our society and I think, you may enact any law but you cannot change it. This is not a matter of joke. They themselves could change it but you cannot change it today.

There is another custom in our society. It is their belief that even the most foolish man belonging to a particular family would not allow his children to go to another family, and if a man tries to do so very severe punishment has been prescribed for him in our community. Even if you say that our community is backward and it is very difficult to improve it, the result of such an action among us is still murder. If you want that the number of murders and assassinations should increase in our society, the Punjab is already notorious for murders and assassinations, for many people are hanged there for such murders etc.—if you want to increase their number you are at liberty to impose any rules and regulations on them immediately. But if you want to decrease the number of murders and assassinations and the sentences of death, I would request you to accept the amendment of Shri Bhatt or of Shri Bhargava.

So I was saying that either a woman, if she loves her children, will be forced to live as a widow for the rest of her life, as has never been done in her community before, or, if she does not love her children, she might take them stealthily to some other place at night and if she meets some daring person who says that he would see how others could harm him the result would be that either she would become a widow again or her husband would be hanged. But, in any case, she would not remain a fortunate wife, though this is a big and a terrifying thing, but it is a fact.

Then there is the question of *sagotra* marriage. How many men and women live in the cities ? I want to state my own reactions

about this Hindu Code Bill. In this house the majority of members come from the urban areas. Those who were born and brought up in the cities confine their thoughts to the rules and regulations and manners and customs of the cities. They think there is a vast difference between town life and village life, they have got no experience about it. I give a simple example. For instance, take the case of a city. If a woman there does not want to marry nobody would object. But if in a village a girl attains about the sixteen of age, not ony does distress befall her parent but that girl is persecuted too. Everybody comes to the father and says. "why do you not arrange for the mrriage of your girl ?" The girl might be bitterly opposed to marriage but she cannot avoid marrage. She is forced to do so; this theory might be good or bad but this is a fact. From this very example you can differentiate between the mode of life in a town and that of a village and see how much difference is there between them; and still you want to enact a common law for both. My friend Shir Jangde spoke so forcefully. He spoke for others but I suspect Shri Jangde has become a townsman or has gone to their side. He is coming to appreciate the urban way of life. He wants to tell his own tale and not that of the people of his own place. So I was submitting that when there is so much difference between the two modes of life, there is such a vast difference between their social conditions, and you want to enact a law which will be applicable to all irrespective of their customs and usages, it would be a great injustice to them.

There is another point I would like to touch upon in this connection and that is with regard to *sagotra* marriage. Unlike the customs obtaining among us in Punjab, here we find that most of the girls are usually married locally. Taking the case of Delhi itself, it will be seen that girls from one part of the city are married in the other part of the city. Even in the small towns having a population of say ten thousand they are married likewise. Under the circumstances, they are not conversant with the customs regarding marriage prevailing among us. In keeping with the custom obtaining among us, I cannot get my son married among my own subcaste which is spread over as many as 24 villages situated within a radius of no less than ten miles. It is not that he cannot be married in only those 24 villages, even the villages numbering about 30 to 40 where the families of his mother's subcaste are settled are ruled out for the purpose of such matrimony. Things do not end here. I cannot get my son married to

a girl from any of the thirty to forty villages, where people of my mother's subcaste live. That is to say, I cannot find a bride for my son from amongst a hundred neighbouring villages or so.

Shri A. C. Shukla : Is it a healthy practice or otherwise ?

Ch. Ranbir Singh : I never laid any claim to this effect. It is none of my intention to annoy him in the way the Hon. Doctor did. Unlike him I cannot dare utter anything unpleasant things. In contrast with the big personality of the Hon. Dr. Ambedkar I am but an humble Member.

Shri Radhelal Vyas (Madhya Bharat)**:** But you are also Jat.

Ch. Ranbir Singh : Of course, I am but not a Sikh Jat like Sardar Bhopinder Singh Man. I do not want to enter into any controversy— and thereby cause offence to anyone—as to whether our custom is better or other's or whether or not this measure is of any use. What I want is simply to apprise you of our customs which; for instance, prevent me from getting my son married in about as many as one hundred to one hundred twenty villages. How under such a state of affairs, can those women residing in small towns or even in big cities, be supposed to have any real estimate of the extent of hardships and difficulties which we are subjected to while facing such issues, because for them marriage is no more than a mere routine affair that could be performed from one *mohalla* to the other ?

Pandit Thakur Das Bhargava : There is no difference between Hindu Law and your law in so far as this matter is concerned.

Ch. Ranbir Singh : There may not be any difference in the laws but the developments do vary. According to our customs we cannot establish matrimonial connections among some certain *gotras.* None can dare go against such a custom. Even the most backward person— under the present social structure such a man is bound to be treated as such, although in future he may be called progressive—cannot possibly take such a step. In fact none has got so much courage, so to say. But what you are doing today is, if I may say so, simply enabling such a man, by law, to take such a step.

Shri A. C. Shukla : What is it that the hon. Member wants ?

Ch. Ranbir Singh : I am not going to say what I want. I would, on the other hand, only want to apprise the House of the various customs prevailing. That is why I am pleading for Shri Bhatt's amendment to be accepted. Let developments be closely watched during the next ten years, the truth will express itself in the right manner. If our course of action would be correct you would, I am sure, change over to our side or, otherwise, we would do the same thing.

So I was referring to the fact that even in the present days *sagotra* marriages are not being performed. But there is no denying the fact that rules and regulations have great force on their back. Supposing a man with the help of this law seeks to get married in the same village or among the same *gotra,* what would be the possible consequences ? He is likely to meet the same fate as I have described earlier. It is not that I want to exaggerate things in any way, but, all the same, let me point out what I consider to be a serious drawback in our present day society. Supposing any member of my family gets married in such a manner, nobody would care to ascertain my view in the matter. If my brother commits any wrong of this type, it may be that I may also be murdered simply because I happen to be his brother, regardless of the fact whether my views are in his favour or otherwise. None is going to ask me to explain my view point. Such is the sorry state of affairs in our community. Indeed how strange it looks that they judge the doings of one brother from those of the others ! Here, in your society, three brothers can hold three different views— one can be a Communist, the second a Socialist and the third Congressite. To be more precise, if a man here is a member of the Bharatiya Jan Sangh, it is open to his brother to join any other party. But things at our end are quite the reverse. If any one member of a certain family there joins Congress, the entire family would be automatically deemed to be Congress site regardless of the fact whether it be so or not. Such is the condition of our community. Now, it is for you to call it whatever you like— progress or otherwise. I, for one, under such circumstances, stand for monogamy in our society. In a country like ours; especially in a community which I belong to namely Jats, monogamy is particularly essential, for among us the number of boys is more than girls. A man have two wives only by encroaching upon the share of any one of his fellow beings. Under the practice of monogamy, comparatively larger number of men would be provided with wives which is otherwise not possible. It is just possible there may be such regions in this country where the number of women is more than men. (*English translation concluded*).

Sardar B. S. Man (Punjab)**:** In Madras they have.

Ch. Ranbir Singh: But the difficulty is that a Hindu Jat of our side is not so broad-minded as to go as far as Madras ; a Sikh Jat may go. I for one consider monogamy to be a step in the right direction ; but the difficulty is that our society has not yet so advanced, or shall

I say, degenerated, so as to agree to the practice of *sagotra* marriage. Let it be postponed for ten years, after that this issue may be taken afresh for consideration, if by that time the society succeeds in reaching that height of advancement, which would clear the field for such steps, we would accept it; otherwise it would keep on pending. We do not, of course, approve of the practice of what we call forced bigamy, but, all the same, the practice continues in our society, though it is not so common. Give us ten years' time during which we may make efforts to do away with such a practice.

In the end once again I take this opportunity to submit to the Hon. Dr. Ambedkar that although, I am a whole-hearted supporter of this measure. I would like him to accept either Shri Bhatt's amendment or amendment No. 420 moved by Shri Bhargava.

Shri Sivan Pillay (Travancore-Cochin)**:** Sir, let the question be now put.

Captain A. P. Singh (Vindhya Pradesh)**:** No, Sir. At least those who have moved amendment may be given an opportunity to speak.

Sardar B. S. Man : Yes, Sir. This is a very important point.

Mr. Deputy Speaker : I shall call Mr. Jhunjhunwala and after him Shri Bhatt. They have tabled amendments.

Shri Syamnandan Sahaya: Sir, I have also tabled amendments.

Mr. Deputy Speaker: I shall call them in this order, and then I shall consider any other name.

***Shri Jhunjhunwala** (Bihar)**:** (*English translation of the Hindi speech*). All my three amendments are in consonance with the Constitution.

12 NOON

My first amendment provides that if this Code contains anything against any religion, no clause of this Bill shall override the provisions of the existing law; the second amendment provides that if this Code contains anything against morality, the Bill shall not override the provisions of any existing law, or any custom or usage in force ; and the third provides that if this Code contains anything against the culture of any section of the people, the Bill shall not override the existing law.

Sir, when I had moved the third amendment, you had asked as to what would be the form and definition of the word 'culture'. Yesterday, in this connection, I had wrongly quoted Article 129 of

*P.D., Vol. 15, Part II, 22nd September 1951, pp. 3168-88.

the Constitution empowering every section of people to have a culture of its own and to conserve the same. In fact it is Article 29 and not Article 129—which reads :—

> "29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

That is why I have put in the word 'culture' here. The Hindu code, in keeping with the Constitution, cannot contain anything whatsoever that would deprive any section of people, or any community of its right to preserve its own religion or culture. I shall deal with my amendments later on. It will be recalled here that you had given a ruling to the effect that one should take the opportunity to deal with any other amendment or clause while speaking on his own amendment, or otherwise he would not be allowed to do so afterwards. It is because of this that I purpose to take this clause first and the amendments later on. Moreover, that would be more convenient to me.

Sir, when the Hindu Code Bill, which is now sought to be passed under another title, namely 'Marriage and Divorce Bill', was placed before the House, it was said to have contained two main things. It is argued in this behalf that this Hindu Code Bill, or say, Marriage and Divorce Amendment Bill, is sought to be passed in view of the two main objectives which it aims at. In the first place, the measure is stated to be progressive ; and secondly, it is described as a legislation that would go a long way to provide women with their due rights hitherto denied to them. Men have so far been very unjust to women and it is with a view to eradicating this evil that this legislation is sought to be enacted. Now, let us see whether or not this measure is progressive. The Hon. Minister of Law did not give any definition of the word 'progressive' that might distinguish between things which are progressive and those which are not. It was stated from this side that the Hindu religion was one of a very long standing and was based on true scientific principles which alone are responsible for its survival so far despite so may atrocities commiteed on it. Replying to this suggestion the Hon. Law Minister was please to state that it was Lord Buddha who had disclosed the true path of the religion. The Buddha, Dr. Ambedkar said, could not tolerate to see women being subjected to men's continuous oppression and having no rights whatsoever. It made Buddha's heart bleed to see men having more rights than women and committing all sorts of atrocities on them.

It was this treatment of discrimination against one sex, the Hon. Law Minister went on to say, that led Lord Buddha to preach equality among men and women. By quoting the Hon. Doctor here I simply want to impress that the Bill in question is stated to have been brought forward in accordance with the Buddha's teachings. Lord Buddha, a great figure as he was, was undoubtedly religious-minded. Let us, therefore, closely study as to what was the real object which he aimed at. Here I am reminded Sir, of a couplet of Sant Jnaneshwar, a renowned Maharashtriyan poet, the actual words of which I do not quite recollect at the moment but it means something like this : A frog accompanied by a bee entered a tank where there were lotus flowers blooming on the water. The bee sat on the lotus and sucked its honey; it carried away with it honey and fine smell. But the frog which had accompanied the bee to the tank could only bring some mud and durt.

SARDAR HUKAM SINGH *in the Chair*

Sir, the Buddha preached that the more we are able to subdue our evil desires, the better it is, for it would only help us to serve the society and then humanity as a whole in a better way. This was the highlight of his teachings. But, Sir, it is something extremely astonishing and painful too, that our Law Minister could not find any such suggestion in his teachings. What he could make out was that since men had had right of polygamy, women too must have the right to divorce in order that the effects of the former could be neutralised. I would request you sir, as also the hon. Members here, just to see what type of equality is sought to be given by this Bill.

Dr. Ambedkar : Is this all relevant on clause 4 ? Let us have some regard for relevancy. We could not altogether abandon the rule of relevancy.

Pandit M. B. Bhargava : Relevancy is not the sole monopoly of the Law Minister.

Mr. Chairman : I would request hon. Members to leave this question to me. The Hon. Minister has asked me to decide it.

Pandit M. B. Bhargava : But he himself pronounced the judgement— he did not refer it to you.

Dr. Ambedkar: Relevancy ought to be also your monopoly— not only mine.

Pandit M. B. Bhargava: It is yours .....

Mr. Chairman: There should not be any cross-questions and answers. I would again request Hon. Members to have greater restraint on themselves. I would ask the Hon. member who is speaking that he should be more relevant in his speech.

Shri Jhunjhunwala: I was quite relevant in pointing out on to where the equality exists and where it is that we should give equal right to the women.

My friend Shri Thakur Das Bhargava observed .....

Mr. Chairman : I must tell him that that is not the real issue at the moment, that is whether equality should exist or not. He may refer to customs and other things, but equality is not the direct issue at this moment. We should have regard to that.

Shri Jhunjhunwala: May I explain to you sir, as to how these things relate to the real issue. I had in the beginning submitted that the Hon. Minister of Law had advocated two main points in support of this measure. Firstly, he described this Bill as a progressive measure, and secondly, he stated that this Bill sought to put women, who had not got equal rights, on equal footing with men. And now this clause 4 provides that the provisions of the Bill shall override all other things. As I said before, I shall first deal with this clause. In my opinion the measure itself is of no use when it does not go to fulfil either of the two things that are advocated in its support. Hence I am just trying to convince the Law Minister that the measure he has put before the House is absurd altogether and does not conform with the two main points which he has advocated. As a matter of fact, the measure ought not to have come at all. That is the point which I wanted the House to take note of. I may, with your permission Sir, make a few more observations in this connection and they would clear the whole thing, for otherwise the argument itself would become meaningless. I would, therefore, like you to appreciate the fact that this measure is neither progressive nor does it seek to provide women with their due rights as was advocated when the Bill was brought forward. If the clause relating to property had been taken. I could understand it because so far as property is concerned, our women have not got equal rights, they are suffering great hardships on this account and are subjected to innumerable atrocities. I am sorry Shrimati Durgabai is not here at the moment; she was kind enough to narrate some heart-rending tales with regard to women in Madras thereby causing much pain to all of us here. The question will be dealt with at length

while taking up the property clause. If in reality the Law Minister was very serious about our women's betterment, he should have taken up property clause first, because we cannot possibly help women take their proper place in society unless their economic condition is well improved and they are made absoultely free in that sphere. Hence, I cannot understand why that clause is not taken first. It is none of my intention to criticise his motives, but, all the same, I cannot but say that his real object is apparently different from what he is advocating. By bringing forward this measure he seems to be intending to exterminate the Hindu religion, Hindu society and the Hindu customs and usage, thereby bringing moral degradation of the Hindu society. His aim seems to be no other than this. By taking the property clause first and thereby seeing that women's economic conditions are improved, we could have given them some solid relief. Many an Hon. Members pleaded for this but there was our Law Minister constantly nodding his head in disapproval. He perhaps does not like us to take the credit of doing something for our women which would help them and redress their grievances.

I was just referring to my friend Shri Bhargava's view that divorce was a thing which he did not like and as a matter of fact very few persons have supported it. The reason is that it is not a good thing. I may just give you an idea as to what would happen if divorce is enforced. Daily the youths of our country would read in the papers that so many cases of divorce took place that day and that such and such person divorced his or her partner. The newspaper published in my friend Shri Brij Kishore's village in Bihar and also that which Shri Syamnandan Sahaya is going to bring out, would report such cases and they would read them. Out of all persons, Shri Brij Kishore seems to have seen greatest advantages in divorce. He would read these reports very enthusiastically. I am rather sorry that he is not here at this time otherwise he could know what madness he was indulging in while talking like that.

Sir, I was submitting what my friend Pandit Thakur Das Bhargava said that divorce was not a good thing. But he stated the reasons why he favoured the idea. He said that in the clause relating to divorce a provision was being made to make it optional. According to him it was a very important provison. He said that it was only an enabling clause. But I would submit that a number of enabling clauses have been passed here. The Hon. Minister of Industry and the Hon. Minister

of Commerce have often taken refuge under this 'enabling clause'. They have said the same thing about Coca-Cola. They say if it is being manufactured, let it be ; it is only an enabling clause. Similarly there is this enabling clause related to divorce. I would like to ask one thing from Pandit Thakur Das Bhargava. Suppose there are two sons of a father and one of them has married three wives. Now the other fellow goes and tell his father that if his brother could marry three and spend so much, then what should he do.

Dr. Ambedkar: He may marry four.

Shri Jhunjhunwala : The father replied that he could marry five. So, according to Pandit Thakur Das's theory, if a son marries three wives, the other should marry five. Why after all he should lag behind ? This is the right he wants to give. But our friend Shri Syamnandan Sahaya is a staunch *baniya.* What would he say ? He would say that if he has married three wives, he should immediately be turned out.

Mr. Chairman : I would request the hon. Member to discuss the subject of marriages when the question of monogamy is taken up. We are now discussing customs and rules and it would be better if he confines himself on matters relating to this subject only.

Pandit Thakur Das Bhargava : He means to suggest that one son would divorce three wives and the other five.

Shri Jhunjhunwala : Sir, I would abide by your ruling and strictly follow it, but as I submitted in the beginning ……..

Mr. Chairman: He can certainly speak on this clause.

Shri Jhunjhunwala: I was speaking on the marriage clause.

Mr. Chairman : Not on the marriage clause. Clause 4 is under discussion.

Sardar B. S. Man : On a point of information. While discussing the present clause and while moving certain amendments to the effect that from its effect certain customs may be excluded, we have to place our case by showing that those customs should be excluded for valid reasons. In that case, I suppose we are entitled to refer to the customs that are at variance with the Hindu Code and thus base our case that customs which have a long history, which have been recognised as such and which are not repugnant to public policy and thus which have the force of law should be permitted. In that respect, I beg to say that it is perfectly within the rights of Members to refer to the customs even in detail.

Mr. Chairman: It has already been laid down that as far as particular customs are concerned, they might be taken up when the particular clauses are under discussion. So far as the relevancy about this general clause is concerned, you can discuss in a general way and say that such and such a custom is very old and it has been uniformly observed. You can say that much about the status of a custom, but if we were to take up all the customs and discuss them there will be no end to. There are the relevant clauses and when they are taken up each particular custom can be discussed. That would be the better place. I do not bar this discussion. I am only requesting the Hon. Member and suggesting to him that that would be the more proper place. Here, he can discuss in a general way.

Shri Jhunjhunwala : Sir, I will speak according to your ruling. But I would like to submit that I could not get an opportunity to speak on clause 2, although the Hon. Speaker ruled that, as in the case of clause 2. Members could speak practically on all matters while discussing clause 4. Only the clause relating to property, could not be discussed. I am pointing out to the House the advantages and disadvantages of the provisions relating to divorce and marriage. I think I was never irrelevant. Anyway, I would now abide by your ruling, and briefly submit my view point. I now come to my amendments.

Babu Ramnarayan Singh : Very good.

Dr. Ambedkar: Take your seat now.

Shri Jhunjhunwala: I will take my seat, you kindly withdraw this Code and relieve the Hindu Community of it.

Dr. Ambedkar: Please sit down.

Shri Jhunjhunwala: You leave and I will sit down.

Dr. Ambedkar: Take your seat, or I will go.

Shri Jhunjhunwala: You go, and I will also sit.

Mr. Chairman: I would ask the Hon. Member to continue his speech.

Shri Jhunjhunwala : I am coming to my speech but the Law Minister, who is a responsible person, is indulging in unnecessary interruptions. He wants that this thing should be talked over and Government's money be spent somehow. He is not so anxious to grant equal rights to women but he is more keen to see that Government's money is spent somehow so that people outside might know that the Law Minister is not idle.

Mr. Chairman : May I request the Hon. Member that he should proceed with his speech instead of answering these questions.

Shri Jhunjhunwala : Sir, I am prepared to abide by your orders. But when any Hon. Member interrupts, it becomes difficult to proceed further and it also takes more time to come to the speech proper.

Dr. Ambedkar: Do not get nervous, they are your comrades.

Shri Jhunjhunwala : Comrades also desert sometimes. I have had a number of comrades like you. You have been professing yourself to be a champion of women's cause, but ultimately deserted them.

Sir, I am continuing with my speech but the Hon. Minister interrupts.

Sardar B. S. Man : Will it not be discourteous to the Hon. Law Minister to ignore the interruptions and not to reply to it ?

Shri Jhunjhunwala : Then there is another point which I would like to submit. Pandit Thakur Das Bhargava said that if anything is suggested that might lead to some harm and if anybody is doing a wrong thing, then how far is it proper to ask others also to do the same thing ? How far is it wise to ask women to do wrong to men if the latter are behaving in that manner ? That is what I am going to point out.

Then we have to see whether this thing is progressive or not. Our Hon. Minister of Home Affairs, Shri Rajaji is not here at present. He made some remark while referring the Press Bill to Select Committee. He said that an article or a caricature about him (I do not exactly remember what it was) appeared in some paper. When he saw it, he found it most revolting and at the same time very obscene. He did not know why it was published and felt it very much. But he said when he saw the news papers of the present day, he felt there was nothing special in that paper which should have offended him (*Interruptions*). My hon. Friends are trying to interrupt me.

Mr. Chairman : If you address the Chair perhaps you will not feel that inconvenience.

Shri Jhunjhunwala : I am accustomed to look all round while speaking.

So, he said that it was quite insignificant. As compared to the articles and caricatures that appear in the present day press, that thing did not seem to be obscene at all. He said he felt it unnecessarily. The newspapers force us to see and read those things that we do not like to see, and young men and women of the country read them. God knows what influence those things might be leaving on our youths.

Now, I wanted to ask at that time whether these articles etc. that appear in our press are progressive. These are far more obscene than that which you thought to be quite vulgar. Then, are they progressive and if they are progressive do they prove beneficial for us ? So, I wanted to point out that our Law Minister who is the Manu of *Kaliyug* .....

Shri Syamnandan Sahaya : Not the Manu of *Kaliyug* but *Kaliyugi* Manu.

Shri Jhunjhunwala : We are living in *Kaliyug* hence I called him the Manu of *Kaliyug*. Our Hon. Minister Shri Gadgil who considers himself to be an outcast Brahmin and thinks he is a *Pandit* has given him this title. All that I mean to say is that he is the Manu of this age. I wanted to know whether the purpose of this progressive measure is to uplift our society or to degrade and demoralize it. I could have understood the whole thing if he had convinced me beofre I had moved my amendments that the measure was progressive in such and such manner. He only said that it was progressive and that women should be given equal rights. He has denied those rights to them that they needed most and which could have benefited them very much. The right which he is giving to them is that of divorce. So, I was trying to point out whether this is really progressive. I say this can never be progressive. If a person does something wrong, it is not wise that I should also repeat the same thing for that reason. On the other hand, such legislation should be made whereby the person doing a wrong thing might be forbidden to do it in future. It should not be that the other person may also be asked to follow him.

That was about this clause. Now, I would move my amendments and fully express my views on them. I have already read them out and so I would not read them again. This will take more time.

Shri Syamnandan Sahaya : How would we understand and vote upon them.

Mr. Chairman : Has he already read them ?

Shri Jhunjhunwala: Yes Sir, I have read them.

Mr. Chairman : Then there is no necessity of reading them again.

Shri Syamnandan Sahaya : We have to vote upon them. You must read them.

Shri Jhunjhunwala : My first amendment is that if anything in the Code is against the Hindu, Sikh, Jain or Buddhist religions or

against Marumakkattayam and Aliyasanthanam laws, then it shall not apply to them.

Dr. Ambedkar: It shall apply only to the *marwaris.*

Shri Jhunjhunwala : Had it not applied to the *marwaris,* even then I would not have sat. This code is dangerously harmful to the society and the country.

Mr. Chairman: The Hon. Member should continue.

Shri Jhunjhunwala : The Hon. Minister is interrupting and casting aspersions. Our Constitution provides for equal rights. Why do you not allow me to reply to his remarks ?

Mr. Chairman : I am also asking him not to interrupt, the Hon. Member may go on.

Shri Jhunjhunwala : You turn towards him and then say, so that he may hear.

Mr. Chairman : I have acquired this habit from the Hon. Member. I would ask the Hon. Minister not to interrupt.

Shri Jhunjhunwala : Now in this connection, I would like to read before the House Article 25 of the Constitution. I would request the Hon. Members to listen patiently:

> "25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess practice and propagate religion."
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

Babu Ramnarayan Singh : Kindly translate it into Hindi.

Shri Jhunjhunwala : You engage a teacher for that. Then there is :

> "(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

After that there is explanation which I need not read. So I submit to the Chair and the Hon. Members of this House that the purpose of my amendments is that when you make an effort to introduce reforms, you have no right to touch our *Dharmshastras.* But you can

bring in any measure if it does not conflict with our *shastras* and our religion. My amendment relates to the following :

> "any text, rule, or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code."

> "Any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with the provisions of this Code."

I want to submit that I have no objection to this legislation. It is alright but if there is anything which is against any religion, Hindu, Sikh or Jain then it would not apply to it.

Shir Naziruddin Ahmad : And Muslims ?

Shri Jhunjhunwala : Muslims do not come in the purview of this Bill. Then, in the next amendment, there is morality in place of religion. You cannot provide for anything in the law which has its effect on the morality of the people and which leads to their moral degeneration. This is what I have to say. This amendment should be added. We have been given this right under the Constitution. If this amendment is not accepted, I would think that our Government is slandering and vilifying our religion. They should not do it.

My third amendment is based on Article 29, wherein the following has been said about culture:

> "29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

My submission is that if this code affects or comes in conflict with our culture or the culture of Hindus, Sikhs, Jains or the culture of any section of the Hindus, then again it shall not be applicable under those circumstances.

[Mr. Deputy Speaker *in the Chair*]

Therefore, while moving these threee amendments before the House,. I would urge the Hon. Members to accept my amendments first and then pass the clause. In the first instance I would ask them, not to pass the clause at all but if they pass it my amendments should also be accepted along with it. I would not take any more time now and finish.

(English translation concluded).

An Hon. Member: Closure, Sir.

Shri Bharati : I move that the question be now put.

Several Hon. Members : No ; no.

Mr. Deputy Speaker: The hon. Members will kindly take their seats. I will put the question to the House.

Shri Naziruddin Ahmad : Before that, Sir, I beg to state that we have submitted amendments. We have a right to speak on them. We have something to say upon them. The merits of our amendments should be discussed.

Mr. Deputy Speaker: I agree.

Shri Syamnandan Sahaya : One more submission Sir. You had just now announced that after Mr. Jhunjhunwala, Mr. Bhatt would speak and that after that, you would decide as to what should happen.

Mr. Deputy Speaker: I least expected that the Hon. Member Mr. Jhunjhunwala would take up so much time. His amendment is a very small one. He has taken too much time. I thought that within that time two Hon. Members might speak. We have had a discussion on this particular clause since yesterday. So far as this clause is concerned, if it had stood alone, I would not have come to any conclusion. We have discussed this to a large extent on the definition clause, what custom is, what its ingredients are, and so on. Taking both of them together, I feel that there has been sufficient discussion on this. Therefore, I shall put the motion to the House. Let the House accept it or reject it.

Shri Bhatt: There is an amendment in my name also.

Shri Syamnandan Sahaya : As Mr. Naziruddin Ahmad stated, we have tabled amendments. We wanted to speak on clause 2 also. After all, even if you pass this clause today, this matter is not finished. There are 50 or 55 clauses to be gone through. Therefore, I wish to make this submission. This is a very important clause because it is here that we lay down that the texts will not be taken into consideration. It is a matter of very primary importance. It will be another matter if we are dealing with clauses about procedural matter, clauses laying down the procedure for marriage and divorce. You may accept a closure or proceed comparatively quickly. But the question whether the texts should be abrogated, whether custom should be abrogated, that is a very vital matter. Therefore, I will again submit most respectfully this. If you are going to finish the Bill today and

the Act is going to be passed, then, it is a different matter and we will submit to the closure. That is not the case and therefore we should allow time to the movers of the amendments.

Mr. Deputy Speaker : How can you say that ?

Shri Syamnandan Sahaya : We have to go through 55 clauses. So far as this clause is concerned, you should allow some more discussion. I think in this matter I have the opinion of a good number of Members on my side.

Pandit Thakur Das Bhargava : May I submit in all humility, Sir, that sometimes when amendments are moved in this House by a large number of members and the real intention of the mover is to get a chance to speak, the situation is quite different. When, on a Bill particular amendments are given, I beg of you kindly to see if the amendment is one of substance. Then, the person moving the amendments should be allowed to speak ordinarily.

Shri Bharati: It is left to the discretion of the Chair.

Pandit Malaviya (Uttar Pradesh)**:** There are still many people who wish to speak on this point, and even though the House may pass the thing, I feel that in a matter of this nature, the least that we can do is to listen to them and then come to any decision. I feel therefore, that we should allow people an opportunity to speak. And indeed, if there is an opportunity, I myself would like to say something about this clause. I hope, sir, we will have the opportunity at least to have our say. The House may not agree with our view; but I feel it will be tyranny if we are not allowed an opportunity even to have our say. There might have been a good deal of discussion on any point, but that does not mean that we should not give an opportunity to those who have not been able to have their say. Therefore, I humbly request that you may kindly allow the discussion on this to go on.

Shri Bharati : Sir, it is absolutely within your discretion to decide, after taking into consideration the totality of the circumstances. We cannot .....

Shri Syamnandan Sahaya : I can only appeal to the Chair that since there are many who have yet to .....

Dr. Ambedkar : There has been sufficient debate already and (*Interruptions*) Sir, I would like to submit that in deciding whether closure should be applied or not, the issue is not whether every Member who wants to speak has spoken. The issue is whether there has been sufficient discussion or not.

Shri Syamnadan Sahaya : But every Member who ought to speak should have been allowed to speak. And, sir, you yourself said that you would allow me to move my amendment to make this provision consistent with the clause.

Pandit Malaviya : While a Member is actually in the midst of his speech, I think, the question is even a little different from what it is when normally the question for closure is put. There is some difference.

Mr. Deputy Speaker: But no Member is now speaking.

Pandit Malaviya : This is a matter of sufficient importance. You will find that those who want to speak have not spoken on this point at all. For instance, I have not spoken a word on this point.

Mr. Deputy Speaker : Hon. members must remember this point—and it has also been referred to by the Hon. Law Minister—that it is not as if every Member who wants to speak on an amendment or a motion, should be given an opportunity.

Shri Naziruddin Ahmad : But those who have given amendments ?

Mr. Deputy Speaker: Then every Hon. Member will submit an amendment so that he may be allowed to speak. That cannot be the criterion. The Chair can be expected to weigh the pros and cons and come to the conclusion whether there has been sufficient debate or not on a particular view-point. It may be that the particular Hon. Member who has tabled the amendment has not pressed it; but some other Hon. Member may have done it, perhaps much more eloquently and forcibly.

Shri Naziruddin Ahmad: No, sir.

Mr. Deputy Speaker : It is a question to be judged by a third person, and I feel that there has been sufficient discussion over this matter.

Shri Syamnandan Sahaya : The points raised in these amendments are different. It is a quite different matter if the same type of amendments are discussed together. But there are particular aspects of these amendments which have not been pressed and those aspects must be considered. That is one submission as this. We are to decide here and now and once and for all, that texts, customs and usages will be given the go-by. Therefore, the importance of this clause

is far more than that of any other that you might discuss in the whole of this Bill.

Mr. Deputy Speaker : Now that this point has been raised. I would like to ask the Hon. Law Minister whether in view of what has been said, it is possible to use the word " inconsistent" in both the parts.

Dr. Ambedkar : That is another matter. I do not propose to make the change and if you will give me a chance. I will explain why.

Pandit Malaviya : Sir, now that the Leader of the House is here, can we make an appeal to him ?

Mr. Deputy Speaker: No. I feel that there has been sufficient discussion.

The question is :

"That the question be now put."

The House divided : Ayes, 63 : Noes, 34.

Division No. 3. Ayes 12-54 p.m.

Alagesan, Shri	Das, Shri B. K.	Guha, Shri G. S.
Ambedkar, Dr.	Das, Shri Ram Dhani	Hasan, Shri M. A.
Ansari, Shri	Devi Singh,	Dr. Hazarika, Shri J. N.
Baldev Singh, Sardar	Durgabai, Shrimati	Hazarika, Shri M.
Barman, Shri	Gadgil, Shri	Himatsinghji, Major-
Bharati, Shri	Ghalib, Shri	General.
Borooah, Shri	Gandhi, Shri Feroz	Iyyunni, Shri
Brajeshwar Prasad, Shri	Ghose, Shri S. M.	Jagjivan Ram, Shri
Chaudhuri, Shrimati	Ghule, Shri	Jain, Shri A. P.
Kaimala.	Gopalaswami, Shri	Jajoo, Shri
Jangde, Shri	Moidu Moulavi	Satish Chandra, Shri
Jayashri, Shrimati	Nehru, Shri Jawaharlal	Sharma, Pandit
Kanaka Sabai, Shri	Obaidullah, Shri	Chandra.
Kesar, Dr.	Pant, Shri D. D.	Shi Charan Lal, Shri
Krishnamachari, Shri	Pillay, Shri Shivan	Shukla, Shri S, N.
T. T.	Poonacha, Shri	Sidhva Shri
Kunzru, Pandit	Pustake, Shri	Subbiah, Shri
Lakshmanan, Shri	Raj Bahadur, Shri	Subramaniam, Dr. V.
Mirza, Shri		Venkataraman, Shri

NOES

Achint Rm, Lala	Indra Vidyavachas-	Sahaya, Shri Shyam
Bhargava, Pandit M. B.	pathi Shri	nandan
Bhargava, Pandit	Jhunjhunwala, Shri	Shah, Prof. K. T.
Thakur Das.	Maitra, Pandit	Sharma Pandit
Bhatt, Shri	Malaviya, Pandit	Balkrishna.
Chandrika Ram, Shri	Man, Sardar B. S.	Shukla, Shri A. C.
Das, Shri Nandkishore	Naziruddin Ahmad, Shri	Singh, Capt. A. P.
Das, Shri Sarangdhar	Oraon, Shri	Snatak, Shri N.
Das, Shri S. N.	Pannalal Bansilal, Shri	Sondhi, Shri
Dholakia, Shri	Ramnarayan Singh, Babu	Tek Chand, Dr.
Gupta, Shri V. J.	Ranbir Singh Ch.	Vaidya, Shri V. B.
Hukam Singh, Sardar	Raut, Shri	Yashwant Rai, Prof.

***Dr. Ambedkar:** I have already explained, when I intervened earlier, as to what exactly is the position of custom under clause 4 which is the subject matter of discussion. At that time I explained that so far as clause 4 is concerned, it does not say that no custom shall be recognised. My amendment to clause 4 is "Save as otherwise expressely provided in this Code", which means that if Parliament agrees to save any particular custom from the operation of any particular clause it is still open to Parliament to do so. Therefore, it is quite wrong on the part of Members of Parliament who have dilated on the question of custom to suggest that this clause is so worded as not to leave any room or place for custom. All that has been said that this Code is trying to abrogate custom altogether is to my mind based upon a complete misunderstanding. As I have already said, it is still open to members of Parliament who are interested in a particular custom to raise that question under the appropriate clause of this Bill when it will be open to discussion and I shall be able to express my opinion whether I am in a position to accept that custom or I am not in a position to accept that custom. Therefore, that position is perfectly safeguarded even if clause 4 is passed in the form in which I have suggested it should be passed.

The only other point to which I wish to make reference is the point made by my friend coming from one of the tribes, Mr. Theble Oragon. It seems to me that he has not read the provisions of clause 2 which this House has already passed. Sub-clause (2) of clause 2 says to what

*P.D., Vol. XV, Part II, 22nd September 1951, pp. 3183-88.

persons it shall not apply. To that there is a proviso. My submission is that in the case of persons who belong to certain tribes which are not altogether Hinduised completely—so that with regard to them we could say that the Hindu Law as such applies to them in the same way as it applies to those who are in fact and in law, *de jure and de facto,* Hindus—it is only those parts of the Hindu Law which they have adopted that will be regarded as applicable to them and not the whole of the Code. Consequently there need be no fear in the minds of members of those communities which are still in a tribal condition and which follow different ways and different modes and different laws with regard to their marriage and divorce. They are still safeguarded except that if it is proved that they have adopted any particular part of the Hindu Law, it is only to that extent that they will be governed by this Code and not otherwise. My submission is that we have taken every precaution by adding the proviso to sub-clause (2) not to impose the whole of the Hindu Law which will be enacted in Part II upon them. They have still the freedom to go their way except to the extent which has been proivded in this proviso.

One other point to which I would like to make a passing reference is the point made by my friend Dr. Pande and my friend Mr. T. N. Singh. They have said, I believe in almost uneqivocal terms, that customs which exist today must be safeguarded and nothing should be done to abrogate them. My friend, Dr. Pande, I believe, is a young graduate; I do not wish to say a raw but a young graduate from the University who probably has yet to study what the institution of Parliament means .....

An hon. Member : He is a professor and a secretary.

Dr. Ambedkar : I am very sorry, but he is still ignorant on certain aspects. People talk about customs in the country. Well, why have customs grown ? Why do the *Smritikaras* allow custom to continue ? I think the answer to that question is to be found in the fact that so far as this country is concerned, there never was such a tiling as a Parliament representing the people, coming here and legislating about their social relationship; there never has been such a thing at all. (*Interruption*). I do not know whether we are better or not. The reason, and the principal reason, why custom has been allowed to govern the life of the people in this country and in a manner much more rigorous than is to be found in any other part of the world.....

Shri Syamnandan Sahaya: If I am not mistaken the common law in England still prevails although there has been a Parliament for ages.

Dr. Ambedkar : I know that he is much more informed on certain subjects than I am.

Shri Syamnandan Sahaya : Dr. Ambedkar, I have never accepted that you are omniscient and that you have all the knowledge. It may be that in certain matters I may have better information.....

Dr. Ambedkar: I agree that you are. My point is that in view of the fact .....

Shri Bhatt: I would like to remind the Hon. Dr. as to wherefrom we got the word *parishad* and how the word *Rajya-parishad* has come into being.

Dr. Ambedkar: That *parishad* is another thing.

Shri Bhatt: That *Parishad* is another thing.

Shri Bhatt: That was nothing but a form of *Parishad*.

Dr. Ambedkar : *Parishad* is only a Council; it is not a Parliament. it has never been. What other way was left open to the people to regulate their life except to make their own custom, because there' was no Parliament, there was no Legislature and nothing of the kind ? But when we have got a Parliament, the function of which is to make law, the question that we have to consider and very seriously consider is whether we are going to allow the people as such who are outside the Parliament to have a parallel authority to make their customary laws and the Parliament should have no right to interfere in them. I think, that is a very serious question that we have to consider. It is quite one thing to say that where custom have grown and they are valid customs, in the way in which a valid custom has been defined in clause 2 of this Bill, they should be retained. That is a very different question. But to say that nowhere custom should be altered, amended, changed is really to abrogate the authority of Parliament and I am very doubtful that any such proposition would be accepted by Parliament and that is a matter about which I have considerable doubt and I also go further and say whether Parliament could continue to be that necessary and useful instrument for changing the ways of life for which it has been designed, if the proposition which had been supported by Messrs. Pande and T. N. Singh was accepted, that Parliament should have no jurisdisction with regard to customary laws.....

Mr. Deputy Speaker: Will the Hon. Law Minister take a long time ?

Dr. Ambedkar: I am just closing.

Shri Naziruddin Ahmad : All our points have not been dealt by the Hon. Minister. What becomes of those amendments which we have moved? Would they be expunged .....

Shri T. N. Singh : On a point of personal explanation, The Hon. Law Minister says that I urged that each and every one of the customs should be scrupulously observed. I think that he did not probably understand my Hindi .....

Dr. Ambedkar: It is quite possible.

Shri T. N. Singh : What I said was that all customs should not be lightly abrogated by a law. What I want .....

Dr. Ambedkar: On that point, I am in agreement.

Shri T. N. Singh: I want to ask if the Hon. Law Minister has got any detailed list of the customs prevalent in the country. In the ignorance of all the customs of the country to say that all customs shall not be applicable, is not proper. That is exactly what I said.

Dr. C. D. Pande : One thing has been said, Sir .....

Dr. Ambedkar: You can come to my room and say that.

Dr. C. D. Pande : Dr. Ambedkar has said this in Parliament and I wish it should be clarified in Parliament. I did not say that Parliament had no authority to make laws for the customary things. I appealed to Parliament not to touch their laws. That is a quite different position than what the Law Minister makes out.

Mr. Deputy Speaker : I shall put the clause and the amendments in this order.

Shri Syamnandan Sahaya: Before you put them, Sir I submit it is 1-15 already. As I said, this is a very vital clause where the texts, customs and usages are being abrogated. Therefore, we desire to divide on the amendments that have been moved. It will take a long time. Therefore, I submit that the actual motion may be put on another day whatever it.

Some hon. Members : Yes, yes.

Some hon. Members : No, no.

Dr. Ambedkar: It will not take more than five minutes.

Some hon. Members : No, no.

Capt. A. P. Singh : There are so many amendments ; it will take four hours (*Interruption*).

Mr. Deputy Speaker: Order, order. What is going to be gained .....

Shri Sondhi (Punjab) **:** There may be division, Sir.

Shri Naziruddin Ahmad : We will ask for division at every stage. We want to go by justice and not by arbitrary rules.

Mr. Deputy Speaker : The Hon. Member may be certain that justice will be rendered. But, the question is, the House had accepted the closure; the debate is over; the Hon. Law Minister has replied.

Pandit Malaviya: The House would have accepted the closure if you had put it five minutes after the debate began. It is the tyranny of the majority that is being forced on us (*Interruption*).

Shrimati Durgabai (Madras)**:** It is the tyranny of the minority over the majority : not the tyranny of the majority.

Shri Naziruddin Ahmad: Tyranny of women.

The Minister of State for Transport and Railways (Shri Santhanam): The hon. Member should withdraw his word ; I think it is contempt of Parliament.

Some Hon. Members : No, no, no contempt.

Mr. Deputy Speaker: Let us not be too sentimental over these matters. After all, Parliament has to go by language and no doubt, it must be moderate. There are in all about eleven amendments.

Shri Syamnandan Sahaya: It will take an hour at least.

Mr. Deputy Speaker : In view of what has happened, I thought we could get through these amendments quickly.

Some hon. Members: No, no.

The House then adjourned till half Past Eight of the Clock on Monday, the 24th September, 1951.

HINDU CODE—*contd.*

Clause 4.—(*Overriding effect of Code*).

***The Minister of Law (Dr. Ambedkar):** May I submit, Sir, that my motion with respect to clause 4 of the Hindu Code, which was held over, may be put and then the other business may be taken up ?

Mr. Deputy Speaker : The Hon. Minister wants preference to be given to that Bill with respect to that part of it. The other day the discussion and reply on the clause was over, but just as I was about to put it to the House Hon. Members said it might take a long time and as it was 1-15 p.m. we had to adjourn. We will now finish it.

I will now put the amendment of Pandit Thakur Das Bhargava.

The question is :

That for clause 4, the following be substituted:

"4. Any text rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with in this Code."

The motion was negatived.

Mr. Deputy Speaker: Now we come to amendment No. 449.

Pandit Thakur Das Bhargava (Punjab)**:** I beg to withdraw it. The amendment was, by leave, withdrawn.

Mr. Deputy Speaker: The question is :

That in the amendment proposed by the Hon. Dr. Ambedkar, in part (a) of the proposed clause 4, the words "or any custom or usage" be omitted.

The motion was negatived

Mr. Deputy Speaker : The question is :

That in the amendment proposed by the Hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after the words "dealt with in this Code" the words "after ten years from the commencement of this code" be inserted ; and

(ii) after part (b) the following *Explanation* be added :

"*Explanation*.—Notwithstanding anything contained in subsection (*a*), for a period of ten years from the commencement of this Code, any text, rule or any custom or usage in force, shall have effect."

*P.D., Vol. XV, Part II 25th September 1951, pp. 3278-3301

The motion was negatived.

Mr. Deputy Speaker : The question is:

That in the amendment proposed by the Hon. Dr. Ambedkar, in part (a) of the proposed clause 4, after the words 'this Code", where they occur for the second time, the words "in so far as it is inconsistent with any of the provisions contained in this code" be inserted. The motion was negatived.

Mr. Deputy Speaker : We pass on to the next amendment now. The question is :

That in the amendment proposed by the Hon. Dr. Ambedkar, to the proposed clause 4, the following proviso be added :

"Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies."

The motion was negatived.

Mr. Deputy Speaker : The next amendment is 380. The question is :

That for clause 4, the following be substituted :

"4. All texts, rules or interpretations of Hindu Law or all customs and usages and all other law in force immediately before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect."

The motion was negatived.

Mr. Deputy Speaker : The question is:

That for clause 4, the following be substituted :

"4. All texts relating to, and all rules of interpretation of Hindu Law in the sacred books or in judicial pronouncement of superior courts in India or of the Judicial Committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this Code, in so far as they are inconsistent with this code, shall, to the extent of the inconsistency, cease to have effect."

The motion was negatived.

Mr. Deputy Speaker: The next one is 420.

Pandit Thakur Das Bhargava : I beg to, withdraw it.

The amendment was, be leave, withdrawn.

Mr. Deputy Speaker : The amendment No. 129 by Sardar hukam Singh is barred. Now 130.

The question is :

That to clause 4, the following proviso be added :

"Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion to the followers of which religion or religions this Code will apply :

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction fo morality behind it."

The motion was negative.

Mr. Deputy Speaker : I shall now put Dr. ambedkar's amendment No. 6.

The question is :

for clause 4, substitute :

"4. *Overriding effect of Code,* —Save as otherwise expressly provided in this Code :—

(a) any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code ; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code."

The motion was adopted.

Mr. Deputy Speaker : The question is :

"That clause 4, as amended, stand part of the bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Mr. Deputy Speaker: The House will now proceed with other legislative business.

Pandit Maitra (West Bengal)**:** What about the further clauses ?

Mr. Deputy Speaker : The other business is on the order paper. After that is disposed of, this will be taken up.

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Annexures and Index

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Annexure I

Statement
BY
Dr. B. R. Ambedkar
in Parliament in explanation of his resignation
from the Cabinet

New Delhi,
10th October 1951

(Reprinted from a copy issued to the Press by Dr. Ambedkar found in Ambedkar papers received from the Bombay High Court by the Government of Maharashtra. Dr. Ambedkar was not allowed to present his statement in the Lok Sabha by the Speaker. He, therefore, quit the House and distributed the copies of statement to the members of Parliament and the Press—*Ed.*)

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Statement
by
Dr. B. R. Ambedkar in explanation of his
RESIGNATION

The House I am sure knows, unofficially if not officially, that I have ceased to be a Member of the Cabinet. I tendered my resignation on Thursday the 27th September to the Prime Minister and asked him to relieve me immediately. The Prime Minister was good enough to accept the same on the very next day. If I have continued to be a Minister after Friday the 28th, it is because the Prime Minister had requested me to continue till the end of the Session—a request to which I was, in obedience to constitutional convention, bound to assent.

Our Rules of Procedure permit a Minister who has resigned his office, to make a personal statement in explanation of his resignation. Many members of Cabinet have resigned during my tenure of office. There has been however no uniform practice in the matter of Ministers who have resigned making a statement. Some have gone without making a statement and others have gone after making a statement. For a few days I was hesitant what course to follow. After taking all circumstances into consideration I came to the conclusion that the making of a statement was not merely necessary, but it was a duty which a member who has resigned owes to the House.

The House has no opportunity to know how the Cabinet works from within, whether there is harmony or whether there is a conflict, for the simple reason that there is a joint responsibility under which a member who is in a minority is not entitled to disclose his differences. Consequently the House continues to think that there is no conflict among members of Cabinet even when as a matter of fact a conflict exists. It is, therefore, a duty of a retiring Minister to make a statement informing the House why he wants to go and why he is not able to continue to take further joint responsibility.

Secondly, if a Minister goes without making a statement, people may suspect that there is something wrong with the conduct of the Minister, either in his public capacity or in his private capacity. No Minister should, I think, leave room for such suspicion and the only safe way out is a statement.

Thirdly we have our newspapers. They have their age-old bias in favour of some and against others. Their judgements are seldom based on merits. Wherever they find an empty space, they are prone to fill the vacuum by supplying grounds for resignation which are not the real grounds but which put those whom they favour in a better light and those not in their favour in a bad light. Some such thing I see has happened even in my case.

It is for these reasons that I decided to make a statement before going out.

It is now 4 years, 1 month and 26 days since I was called by the Prime Minister to accept the office of Law Minister in his Cabinet. The offer came as a great surprise to me. I was in the opposite camp and had already been condemned as unworthy of association when the interim Government was formed in August 1946. I was left to speculate as to what could have happened to bring about this change in the attitude of the Prime Minister. I had my doubts. I did not know how I could carry on with those who had never been my friends. I had doubts as to whether I could, as a Law Member, maintain the standard of legal knowledge and acumen which had been maintained by those who had preceded me as Law Ministers of the Government of India. But I kept my doubts at rest and accepted the offer of the Prime Minister on the ground that I should not deny my cooperation when it was asked for in the building up of our nation. The quality of my performance as a Member of the Cabinet and as Law Minister, I must leave it to others to judge.

I will now refer to matters which have led me to sever my connection with my colleagues. The urge to go has been growing from long past due to variety of reasons.

I will first refer to matters purely of a personal character and which are the least of the grounds which have led me to tender my resignation. As a result of my being a member of the Viceroy's Executive Council, I knew the Law Ministry to be administratively of no importance. It gave no opportunity for shaping the policy of the Government of India. We used to call it an empty soap box only good for old lawyers to play with. When the Prime Minister made me the offer, I told him that besides being a lawyer by my education and experience, I was competent to run any administrative Department and that in the old Viceroy's Executive Council I held two administrative portfolios, that of Labour and C.P.W.D., where a great deal of planning projects were dealt with by me and would

like to have some administrative portfolio. The Prime Minister agreed and said he would give me in addition to Law the Planning Department which, he said, he was intending to create. Unfortunately the Planning Department came very late in the day and when it did come I was left out. During my time, there have been many transfers of portfolios from one Minister to another. I thought I might be considered for any one of them. But I have always been left out of consideration. Many Ministers have been given two or three portfolios so that they have been overburdened. Others like me have been wanting more work. I have not even been considered for holding a portfolio temporarily when a Minister in charge has gone abroad for a few days. It is difficult to understand what is the principle underlying the distribution of Government work among Ministers which the Prime Minister follows. Is it capacity ? Is it trust ? Is it friendship ? Is it pliability ? I was not even appointed to be a member of main Committees of the Cabinet such as the Foreign Affairs Committee or the Defence Committee. When the Economic Affairs Committee was formed, I expected, in view of the fact that I was primarily a student of Economics and Finance, to be appointed to this Committee. But I was left out. I was appointed to it by the Cabinet, when the Prime Minister had gone to England. But when he returned, in one of his many essays in the reconstruction of the Cabinet, he left me out. In a subsequent reconstruction my name was added to the Committee, but that was as a result of my protest.

The Prime Minister, I am sure, will agree that I have never complained to him in this connection. I have never been a party to the game of power politics inside the Cabinet or the game of snatching portfolios which goes on when there is a vacancy. I believe in service, service in the post which the Prime Minister, who as the head of the Cabinet, thought fit to assign to me. It would have, however, been quite unhuman for me not to have felt that a wrong was being done to me.

I will now refer to another matter that had made me dissatisfied with the Government. It relates to the treatment accorded to the Backward Classes and the Scheduled Castes. I was very sorry that the Constitution did not embody any safeguards for the Backward Classes. It was left to be done by the Executive Government on the basis of the recommendations of a Commission to be appointed by the President. More than a year has elapsed since we passed the Constitution. But the Government has not even thought of appointing the Commission. The year 1946 during which I was out

of office, was a year of great anxiety to me and to the leading members of the Scheduled Castes. The British had resiled from the commitments they had made in the matter of constitutional safeguards for the Scheduled Castes and the Scheduled Castes had no knowing as to what the Constituent Assembly would do in that behalf. In this period of anxiety I had prepared a report* on the condition of the Scheduled Castes for submission to the United Nations. But I did not submit it. I felt that it would be better to wait until the Constituent Assembly and the future Parliament was given a chance to deal with the matter. The provisions made in the Constitution for safeguarding the position of the Scheduled Castes were not to my satisfaction. However, I accepted them for what they were worth, hoping that the Government will show some determination to make them effective. What is the position of the Scheduled Castes to-day ? So far as I see, it is the same as before. The same old tyranny, the same old oppression, the same old discrimination which existed before, exists now, and perhaps in a worst form. I can refer to hundreds of cases where people from the Scheduled Castes round about Delhi and adjoining places have come to me with their tales of woes against the Caste Hindus and against the Police who have refused to register their complaints and render them any help. I have been wondering whether there is any other parallel in the world to the condition of the Scheduled Castes in India. I cannot find any. And yet why is no relief granted to the Scheduled Castes ? Compare the concern the Government shows over safeguarding the Muslims. The Prime Minister's whole time and attention is devoted for the protection of the Muslims. I yield to none, not even to the Prime Minister, in my desire to give the Muslims of India the utmost protection wherever and whenever they stand in need of it. But what I want to know is, are the Muslims the only people who need protection? Are the Scheduled Castes, the Scheduled Tribes and the Indian Christians not in need of protection ? What concern has he shown for these communities ? So far as I know, none and yet these are the communities which need far more care and attention than the Muslims.

I could not contain within myself the indignation I have felt over the neglect of the Scheduled Castes by the Government and on one occasion I gave vent to my feelings at a public meeting of the Scheduled Castes. A question was asked, from the Hon'ble the Home Minister, whether my charge that the Scheduled Castes had not

*Editor regrets his inability to trace out this report and will welcome any assistance in this regard—*Ed.*

benefitted by the rule which guaranteed to them 12½ per cent representation was true. In answer to the question the Hon'ble the Home Minister was pleased to say that my charge was baseless. Subsequently for some reason—it may be for satisfying the qualms of his conscience—he, I am informed, sent round a circular to the various Departments of the Government of India asking them to report how many Scheduled Caste candidates had been recently recruited in Government service. I am informed that most Departments said in reply 'NIL' or nearly nil. If my information is correct, I need make no commentary on the answer given by the Hon'ble the Home Minister.

From my early childhood I have dedicated myself to the upliftment of the Scheduled Castes among whom I was born. It is not that there were no temptations in my way. If I had considered my own interests, I could have been anything I wanted to be and if I had joined the Congress I would have reached to the highest place in that organization. But as I said, I had dedicated myself to the upliftment of the Scheduled Castes and I have followed the adage which says that it is better to be narrow-minded if you wish to be enthusiastic about a cause which you wish to accomplish. You can therefore, well imagine what pain it has caused me to see that the cause of the Scheduled Castes has been relegated to the limbo of nothing.

The third matter which has given me cause, not merely for dissatisfaction but for actual anxiety and even worry, is the foreign policy of the country. Any one, who has followed the course of our foreign policy and along with it the attitude of other countries towards India, could not fail to realize the sudden change that has taken place in their attitude towards us. On 15th of August 1947 when we began our life as an independent country, there was no country which wished us ill. Every country in the world was our friend. Today, after four years, all our friends have deserted us. We have no friends left. We have alienated ourselves. We are pursuing a lonely furrow with no one even to second our resolutions in the U.N.O. When I think of our foreign policy, I am reminded of what Bismark and Bernard Shaw have said. Bismark has said that "politics is not a game of realizing the ideal. Politics is the game of the possible." Bernard Shaw not very long ago said that good ideals are good but one must not forget that it is often dangerous to be too good. Our foreign policy is in complete opposition to these words of wisdom uttered by two of the world's greatest men.

How dangerous it has been to us this policy of doing the impossible and of being too good is illustrated by the great drain on our resources made by our military expenditure, by the difficulty of getting food for our starving millions and by difficulty of getting aid for the industrialization of our country.

Out of 350 crores of rupees of revenue we raise annually, we spend about Rs. 180 crores of rupees on the Army. It is a colossal expenditure which has hardly any parallel. This colossal expenditure is the direct result of our foreign policy. We have to foot the whole of our Bill for our defence ourselves because we have no friends on which we can depend for help in any emergency that may arise. I have been wondering whether this is the right sort of foreign policy.

Our quarrel with Pakistan is a part of our foreign policy about which I feel deeply dissatisfied. There are two grounds which have disturbed our relations with Pakistan—one is Kashmir and the other is the condition of our people in East Bengal. I felt that we should be more deeply concerned with East Bengal where the condition of our people seems from all the newspapers intolerable than with Kashmir. Notwithstanding this we have been staking our all on the Kashmir issue. Even then I feel that we have been fighting on an unreal issue. The issue on which we are fighting most of the time is, who is in the right and who is in the worng. The real issue to my mind is not who is in the right but what is right. Taking that to be the main question, my view has always been that the right solution is to partition Kashmir. Give the Hindu and Buddhist part to India and the Muslim part to Pakistan as we did in the case of India. We are really not concerned with the Muslim part of Kashmir. It is a matter between the Muslims of Kashmir and Pakistan. They may decide the issue as they like. Or if you like, divide it into three parts; the Cease-fire zone, the Valley and the Jammu-Ladhak Region and have a plebiscite only in the Valley. What I am afraid of is that in the proposed plebiscite, which is to be an overall plebiscite, the Hindus and Buddhists of Kashmir are likely to be dragged into Pakistan against their wishes and we may have to face the same problems as we are facing today in East Bengal.

I will now refer to the Fourth matter which has a good deal to do with my resignation. The Cabinet has become a merely recording and registration office of decisions already arrived at by Committees. As I have said, the Cabinet now works by Committees.

There is a Defence Committee. There is a Foreign Committee. All important matters relating to Foreign affairs are dealt with by it. All matters relating to Defence are disposed of by the Defence Committee. The same members of the Cabinet are appointed by them. I am not a member of either of these Committees. They work behind an iron curtain. Others who are not members have only to take joint responsibility without any opportunity of taking part in the shaping of policy. This is an impossible position.

I will now deal with a matter which has led me finally to come to the decision that I should resign. It is the treatment which was accorded to the Hindu Code. The Bill was introduced in this House on the 11th April 1947. After a life of four years, it was killed and died unwept and unsung, after 4 clauses of it were passed. While it was before the House, it lived by fits and starts. For full one year the Government did not feel it necessary to refer it to a Select Committee. It was referred to the Select Committee on 9th April 1948. The Report was presented to the House on 12th August 1948. The motion for the consideration of the Report was made by me on 31st August 1948. It was merely for making the motion that the Bill was kept on the Agenda. The discussion of the motion was not allowed to take place until the February Session of the year 1949. Even then it was not allowed to have a continuous discussion. It was distributed over 10 months, 4 days in February, 1 day in March and 2 days in April 1949. After this, one day was given to the Bill in December 1949, namely the 19th December on which day the House adopted my motion that the Bill as reported by the Select Committee be taken into consideration. No time was given to the Bill in the year 1950. Next time the Bill came before the House was on 5th February 1951 when the clause by clause consideration of the Bill was taken. Only three days 5th, 6th and 7th of February were given to the Bill and left there to rot.

This being the last Session of the present Parliament, Cabinet had to consider whether the Hindu Code Bill should be got through before this Parliament ended or whether it should be left over to the new Parliament. The Cabinet unanimously decided that it should be put through in this Parliament. So the Bill was put on the Agenda and was taken up on the 17th September 1951 for further clause by clause consideration. As the discussion was going on the Prime Minister put forth a new proposal, namely, that the Bill as a whole may not be got through within the time available and that it was desirable to get a part of it enacted into law rather

than allow the whole of it to go to waste. It was a great wrentch to me. But I agreed, for, as the proverb says "it is better to save a part when the whole is likely to be lost". The Prime Minister suggested that we should select the Marriage and Divorce part. The Bill in its truncated 'form went on. After two or three days of discussion of the Bill the Prime Minister came up with another proposal. This time his proposal was to drop the whole Bill even the Marriage and Divorce portion. This came to me as a great shock—a bolt from the blue. I was stunned and could not say anything. I am not prepared to accept that the dropping of this truncated Bill was due to want of time. I am sure that the truncated Bill was dropped because other and more powerful members of the Cabinet wanted precedence for their Bills. I am unable to understand how the Benaras and Aligarh University Bills, how the Press Bill could have been given precedence over the Hindu Code even in its attenuated form ? It is not that there was no law on the Statute Book to govern the Aligarh University or the Benaras University. It is not that these Universities would have gone to wreck and ruins if the Bills had not been passed in this session. It is not that the Press Bill was urgent. There is already a law on the Statute Book and the Bill could have waited. I got the impression that the Prime Minister, although sincere, had not the earnestness and determination required to get the Hindu Code Bill through.

In regard to this Bill I have been made to go through the greatest mental torture. The aid of Party Machinery was denied to me. The Prime Minister gave freedom of Vote, an unusual thing in the history of the Party. I did not mind it. But I expected two things. I expected a party whip as to time limit on speeches and instruction to the Chief Whip to move closure when sufficient debate had taken place. A whip on time limit on speeches would have got the Bill through. When freedom of voting was given there could have been no objection to have given a whip for time limit on speeches. But such a whip was never issued. The conduct of the Minister for Parliamentary Affairs, who is also the Chief Whip of the Party in connection with the Hindu Code, to say the least, has been most extraordinary. He has been the deadliest opponent of the Code and has never been present to aid me by moving a closure motion. For days and hours filibustering has gone on a single clause. But the Chief Whip, whose duty it is to economise Government time and push on Government Business, has been systematically absent when the Hindu Code has been under consideration in the House. I have never seen a case of a Chief Whip so disloyal to the Prime Minister and a Prime Minister so loyal to a disloyal Whip.

Notwithstanding this unconstitutional behaviour, the Chief Whip is really a darling of the Prime Minister. For notwithstanding his disloyalty he got a promotion in the Party organization. It is impossible to carry on in such circumstances.

It has been said that the Bill had to be dropped because the opposition was strong. How strong was the opposition ? This Bill has been discussed several times in the Party and was carried to division by the opponents. Every time the opponents were routed. The last time when the Bill was taken up in the Party Meeting, out of 120 only 20 were found to be against it. When the Bill was taken in the Party for discussion, 44 clauses were passed in about 3½ hours time. This shows how much opposition there was to the Bill within the Party. In the House itself there have been divisions on three clauses of the Bill—2, 3 and 4. Every time there has been a overwhelming majority in favour even on clause 4 which is the soul of the Hindu Code.

I was therefore, quite unable to accept the Prime Minister's decision to abandon the Bill on the ground of time. I have been obliged to give this elaborate explanation for my resignation because some people have suggested that I am going because of my illness. I wish to repudiate any such suggestion. I am the last man to abandon my duty because of illness.

It may be said that my resignation is out of time and that if I was dissatisfied with the Foreign Policy of the Government and the treatment accorded to Backward Classes and the Scheduled Castes I should have gone earlier. The charge may sound as true. But I had reasons which held me back. In the first place, most of the time I have been a member of the Cabinet, I have been busy with the framing of the Constitution. It absorbed all my attention till 26th January 1950 and thereafter I was concerned with the Peoples' Representation Bill and the Delimitation Orders. I had hardly any time to attend to our Foreign Affairs. I did not think it right to go away leaving this work unfinished.

In the second place, I thought it necessary to stay on, for the sake of the Hindu Code. In the opinion of some it may be wrong for me to have held on for the sake of the Hindu Code. I took a different view. The Hindu Code was the greatest social reform measure ever undertaken by the Legislature in this country. No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it in point of its significance.

To leave inequality between class and class, between sex and sex which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code. It is for its sake that I stayed on notwithstanding my differences. So if I have committed a wrong it is in the hope of doing some good. Had I no ground for such a hope, for overcoming the obstructionist tactics of the opponents ? I would like in this connection to refer only to three of the statements made by the Prime Minister on the floor of the House.

On 28th November, 1949 the Prime Minister gave the following assurance. He said :

> "What is more, the Government is committed to this thing (Hindu Code). It is going through with it."
>
> * * * *
>
> "Government would proceed with that. It is for this House to accept a measure, but if a Government takes an important measure and the House rejects it, the House rejects that Government and the Government goes and another Government comes in its place. It should be clearly understood that this is one of the important measures to which the Government attaches importance and on which it will stand or fall."

Again on 19th December 1949, the Prime Minister said :

> "I do not wish the House to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because of any particular clause or anything, but because of the basic approach to this vast problem in problems, economic and social. We have achieved political freedom in this country, political independence. That is a stage in the journey, and there are other stages, economic, social and other and if society is to advance, there must be this integrated advance on all fronts."

On the 26th September 1951 the Prime Minister said :

> "It is not necessary for me to assure the House of the desire of Government to proceed with this measure in so far as we can proceed with it within possibilities, and so far as we are concerned we consider this matter as adjourned till such time as the next opportunity—I hope it will be in this Parliament—offers itself.

This was after the Prime Minister had announced the dropping of the Bill. Who could not have believed in these pronouncements of the Prime Minster ? If I did not think that there could be a difference between the promises and performances of the Prime Minister the fault is certainly not mine. My exit from the Cabinet may not be a matter of much concern to anybody in this country. But I must be true to myself and that I can be only by going out. Before I do so I wish to thank my colleagues for the kindness and courtesy they have shown to me during my membership of the Cabinet. While I am not resigning my membership of Parliament I also wish to express my gratitude to Members of Parliament for having shown great tolerance towards me.

New Delhi,
10th October 1951 **B. R. AMBEDKAR**

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Annexure II

Government of India, through its Publication Division had published a book by name 'Hindu Code Bill and its purpose' in Hindi language during the 50s. This book contained two speeches of Dr. Ambedkar delivered in the Constituent Assembly, Press reports of the speeches against the Code by Shankaracharya of Jyotirmath and Swami Karpatriji; and the articles supporting the Code by an eminent Vedic Scholar Pandit Dharmadeo Vidyavachaspati. The book also included text of the Hindu Code along with the press-reports supporting it.

It has been felt by the Committee Members that the inclusion of articles by Dharmadeo Vidyavachaspati from the Hindi book in the present volume would be of utmost help to the reader to understand how the reform introduced by Dr. Ambedkar had the support of the Hindu scriptures also. I hope students and scholars alike would benefit by these articles.

—Editor

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Annexure II

(हिन्दू कोड बिल पर कुछ विचार-1)

हिन्दू कोड बिल हिन्दुत्व का रक्षक है

पं. धर्मदेव विद्यावाचस्पति

[वेदों क सुप्रसिद्ध विद्वान् पं. धर्मदेव विद्यावाचस्पति उन थोड़े से व्यक्तियों में हैं जिनके जीवन का अधिकांश समय वेदों एवं आर्यों के प्राचीन धार्मिक ग्रन्थों के अनुशीलन और अनुसन्धान में बीता है। पिछले दिनों उनकी एक लेखमाला दिल्ली के सुप्रसिद्ध हिन्दी दैनिक "वीर अर्जुन" में प्रकाशित हुई थी जिसमें उन्होंने प्राचीन स्मृतियों, वेदों तथा शास्त्रों के प्रमाण एवं उद्धरण देकर हिन्दू बिल के विविध विधानों का सारर्भित विवेचन किया है । विचारशील पाठकों के लिए "वीर अर्जुन" की स्वीकृति से यह लेख माला यहां पुनः प्रकाशित की जा रही है]

भारत सरकार के विधान-सचिव माननीय डा. भीमराव अम्बेडकर द्वारा भारतीय राष्ट्र संसद् व पार्लियामेण्ट में प्रस्तुत 'हिन्दू कोड बिल' के विरुद्ध घोर आन्दोलन किया जा रहा है । देहली में भी एक हिन्दू कोड विरोधी सम्मेलन हो चुका है जिसमे मुख्य नारा यह लगाया गया कि इससे धर्म तथा संस्कृति का सर्वनाश हो जायेगा। मैं प्रारम्भ में ही इस बात को स्पष्ट कर देना चाहता हूँ कि मैं हिन्दू कोड बिल का सर्वांश में समर्थक नहीं हूँ। इसमें अनेक संशोधनों की आवश्यकता है, ऐसा भी मेरा विचार हैं किन्तु मुझे यह देख कर दुख होता है कि इस बिल के सम्बन्ध में असत्य प्रचार बहुत अधिक किया जा रहा है । प्रायः इसके विरोधी ऐसे हैं जिन्होंने ध्यानपूर्वक बिल की धाराओं को पढ़ने का कभी कष्ट नहीं उठाया और वे 'हिन्दूधर्म और संस्कृति संकट में' इस नारे को लगा कर सर्वसाधारण जनता को उत्तेजित करने का अनुचित प्रयत्न कर रहे हैं । मैं स्वयं वेदादि सत्यशास्त्रों में दृढ़ विश्वास रखने वाला हूँ और इसलिए शास्त्रीय दृष्टि से भी इस बिल में प्रस्तुत प्रस्तावों का मैंने अनुशीलन किया है जिसका परिणाम मैं जनता के सन्मुख रखने का प्रयत्न करूंगा। किंतु मैं इस प्रथम लेख में यह दिखाना चाहता हूँ कि इस 'हिन्दू कोड बिल' के निर्माता या समर्थक 'हिन्दू धर्म' और संस्कृति का नाश करना चाहते हैं, उन्हें 'हिन्दू धर्म' से कोई प्रेम नहीं इत्यादि जो अप्रचार किया जा रहा है वह कितना असत्य है ?

इस बिल की धारा 78 में लिखा है कि कोई भी ऐसा व्यक्ति इस धारा के विधानों के अधीन किसी नाबालिग का वली (संरक्षक) होने का अधिकार नहीं रखेगा :

(अ) 'यदि वह हिन्दू धर्म को त्याग चुका है' इत्यादि ।

धारा 81 में 'स्वाभाविक बली का अधिकार सत्ता का खण्डन' शीर्षक के नीचे लिखा है-जहां पर कि किसी नाबालिग हिंदू का स्वाभाविक वली ऐसे नाबालिग की संरक्षकता किसी दूसरे व्यक्ति को दे देता है, वह निम्न अंकितों को छोड़ कर खण्डन योग्य होगा:

(क) जहां पर कि उसको खण्डित करने की स्वीकृति देना नाबालिग के हित लाभ के लिए नहीं है अथवा (ख) जहां पर कि स्वाभाविक वली हिंदू धर्म को त्याग चुका है।

धारा 83 में लिखा है- "किसी नाबालिग हिंदू के वली का कर्त्तव्य होगा कि वह ऐसे नाबालिग का हिंदू के रूप में पालन-पोषण करे"।

गोद लेने के विषय में विधवा के अधिकार की समाप्ति विषयक धारा 61 में लिखा है कि एक विधवा का गोद लेने का अधिकार समाप्त हो जाता है:

(क) जब कि वह पुनर्विवाह कर लेती है।

(ख) जब हिंदू धर्म को त्याग देती है। गोद देने की योग्यता रखने वाले व्यक्ति इस शीर्षक की धारा 62, उपधारा (3) में लिखा है कि माता बच्चे को गोद दे सकेगी:

(क) यदि बच्चे का पिता मर चुका है।

(ख) यदि वह पिता हिन्दू धर्म को त्याग चुका है इत्यादि। प्रवर समिति (सेलेक्ट कमेटी) की रिपोर्ट में ऊपर उद्धत धारा 78 के विषय में सदस्यों ने लिखा है कि 'हम समझते हैं कि जो व्यक्ति हिन्दू धर्म को या इस संसार को त्याग चुका है उसे किसी नाबालिग हिन्दू का स्वाभाविक वली (संरक्षक) बनने का अधिकार न होना चाहिए।'

पत्नी का भरण-पोषण, इस शीर्षक की धारा 126 में लिखा है कि निम्नलिखित दशाओं में जीविका प्राप्त करने के अपने अधिकार से वंचित हुए बगैर भी उससे अलग रहने का एक हिंदू पत्नी अधिकार रख सकती है यदि (ए) वह धर्म परिवर्तन द्वारा अन्य धर्मावलम्बी बन कर अहिंदू बन चुका है इत्यादि। उपधारा (3) में लिखा है कि यदि कोई हिंदू पत्नी अपतिव्रता है अथवा धर्म परिवर्तन द्वारा अन्य धर्मावलम्बी बन कर अहिंदू बन चुकी है, तो उस हालत में उसे अलग रहने तथा भरण-पोषण हासिल करने का अधिकार नहीं होगा।

धारा 120 का धर्मपरिवर्तन करने वाला दाय ग्रहण की योग्यता नहीं रखता, इस शीर्षक के नीचे लिखा है कि जहां इस कोड के प्रारम्भ होने से पहिले या बाद कोई हिंदू धर्म परिवर्तन करके अन्य धर्मावलम्बी बन जाने के कारण हिंदू न रह गया हो या अहिन्दू बन चुका हो तो इस प्रकार के धर्म परिवर्तन के पश्चात् उस पुरुष या उस स्त्री से जो बच्चे उत्पन्न होंगे, तथा उनकी सन्तान अपने किसी हिन्दू सम्बन्धी की सम्पत्ति को

प्राप्त करने का अधिकार न रखेगी जब तक कि ऐसे बच्चे या सन्तान उत्तराधिकार शुरू होने के समय हिन्दू नहीं है।

ऐसे अन्य उद्धरण भी अनेक दिये जा सकते हैं जिनसे स्पष्ट है कि हिन्दू कोड बिल के निर्माताओं ने हिन्दुत्व की रक्षा का विशेष ध्यान रखा है तथा उन्हें हिन्दू धर्म से प्रेम है, यद्यपि उसमें सुधार की आवश्यकता को वे अवश्य अनुभव करते है जिसका उद्देश्य भी वस्तुतः हिन्दू धर्म और जाति का उद्धार ही है।

इस विषय में माननीय डा. अम्बेडकर आदि से हुई बातचीत के आधार पर मैं निश्चय के साथ कह सकता हूँ कि वे हिंदू जाति को एकसूत्र में लाने और उसके संगठन को दृढ़ करने के लिए ही इस हिन्दू कोड बिल को प्रस्तुत कर रहे हैं जिसमें हिन्दुओं के अन्दर, धारा 2 में दी परिभाषा के अनुसार न केवल वे व्यक्ति आते हैं जो हिन्दू ध र्म के किसी भी स्वरूप या संप्रदाय को मानते हैं, किन्तु बौद्ध, जैन या सिक्ख धर्म के अनुयायी अथवा हिन्दू धर्म ग्रहण करने वाले व्यक्ति भी आते हैं । आदिवासी तथा अन्य भी इस परिभाषा में हिन्दुओं के अन्दर ही माने गये है।

विशाल दृष्टि से देखने पर निष्पक्षपात विचारकों को ऐसे एक सर्वसामान्य कोड का महत्व ज्ञात हो सकता है। भिन्न-भिन्न स्थानों और जातियों के रीति-रिवाजों ने विशाल हिन्दू को कैसे छिन्न-भिन्न कर रखा है यह बताने की अवश्यकता नहीं। इसलिये मैं चाहता हूँ कि झूठे नारे लगाने और इस बिल का पूर्ण विरोध करने की भावना को छोड़ कर लोग इस बिल की धाराओं का निष्पन्न होकर अध्ययन करें और तब ऐसे निर्देश अथवा संशोधन प्रस्तुत करें जिससे यह अधिक उपयोगी और लाभकारक बन सके। डा. अम्बेडकर तथा अन्य सदस्य ऐसे क्रियात्मक निर्देशों का स्वागत करने को उद्यत हैं।

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(हिन्दू कोड बिल पर कुछ विचार–2)

विवाहसंबंधी धाराएं

पं. धर्मदेव विद्यावाचस्पति

प्रथम लेख में मैंने पाठकों से निवेदन किया था कि 'हिन्दू कोड बिल का उद्देश्य हिन्दू धर्म, समाज और संस्कृति का सर्वनाश करना है' इत्यादि कल्पित, असत्य नारों पर विश्वास न करके उन्हें निष्पक्षता होकर गम्भीर भाव से हिन्दू कोड बिल की भिन्न 2 धाराओं पर विचार करना चाहिये। इस लेख में मैं विवाह विषयक धाराओं पर कुछ प्रकाश डालना चाहता हूं।

विवाह को शास्त्रीय और सिविल इन दोनों भागों में विभक्त करते हुए शास्त्रीय विवाह की शर्तें धारा 7 में निम्नलिखित मानी गई हैं:–

धारा 7–यदि निम्नलिखित शर्तें पूरी हो जाती हैं तो किन्हीं भी दो हिन्दुओं में शास्त्रीय रीति के अनुसार विवाह सम्पन्न हो सकेगा:–

(1) यदि दोनों पक्षों में विवाह के समय पर कोई पक्ष भी पति अथवा पत्नी नहीं रखता।

(2) यदि दोनों पक्षों में विवाह के समय कोई जड़ बुद्धि या पागल नहीं है।

(3) यदि विवाह के समय वर अठारह वर्ष की आयु पूरी कर चुका है और वधू 14 वर्ष आयु पूरी कर चुकी है।

(4) यदि दोनों पक्ष परस्पर निषेधात्मक सम्भन्ध की कोटियों के अन्तर्गत नहीं आते।

(5) यदि दोनों पक्ष आपस में परस्पर सपिण्ड नहीं हैं और यदि पारस्परिक आचार और परम्परा के अन्तर्गत दोनों पक्षों में ऐसा संस्कार जायज (वैध) मानने की प्रथा न हो।

(6) जहां वर या वधू 16 वर्ष की आयु पूरी नहीं कर चुकी हैं उसके संरक्षक को स्वीकृति प्राप्त की जा चुकी है।

सपिण्ड सम्बन्ध की परिभाषा और व्याख्या करते हुए धारा 5 में कहा गया है कि,–

(1)(क) सपिण्ड सम्बन्ध का अर्थ अपने मातृकुल की तीन पीढ़ी तक और पितृकुल की 5 पीढ़ी तक होगा।

(ख) दो व्यक्ति उसी अवस्था में परस्पर सपिण्ड कहे जाते हैं यदि वे, एक दूसरे के वंश-परम्परा से सपिण्ड सम्बन्ध की सीमा के भीतर समर्वशज हैं अथवा यदि वे दोनों सपिण्ड सम्बन्ध की सीमा के भीतर सम्मिलित वंश परम्परागत आपस में एक दूसरे के साथ समान वंशज के रूप में हैं।

(ग) निषिद्ध सम्बन्ध का क्रम ... दो व्यक्तियों का उस अवस्था में निषिद्ध सम्बन्ध कहा जाता है यदि दोनों में से एक वंशानुक्रम से दूसरे का पुरखा हो, अथवा वंशानुक्रम से पुरखे या संतति की पत्नी या पति रहा हो, अथवा वे दोनों भाई-बहन, चाचा-भतीजी और चाची-भतिजा अथवा भाईयों व बहनों की सन्तति हों।

स्पष्टीकरण:- वाक्य खण्ड 1 और 2 में ये समबन्ध भी शामिल हैं। (अ) ऐसा सम्बन्ध जो कि अर्धरक्तयुक्त सहोदर रक्तयुक्त है।

(2) धर्मज तथा अधर्मज सन्तति सम्बन्ध।

(3) दत्तक अथवा रक्त सम्बन्ध।

उक्त वाक्य-खण्डों में कथित सभी सम्बन्धद्योतक शब्दों का इसी प्रकार अर्थ समझा जायेगा। पाठक देखेंगे कि शास्त्रीय विवाह के लिए जो शर्तें उपर वर्णित की गई हैं वे अधिकतर वही हैं जिन्हें धार्मिक दृष्टि से अब भी प्राय: मान्य समझा जाता है। अन्तर थोड़ा सा हैं। "पंचमात् सप्तमादूर्ध्वमातृत: पितृतस्तथा"। इत्यादि स्मृति वचनों में मातृकुल और पितृकुल की क्रमश: 5 और 7 पीढ़ियों को सपिण्ड मानकर उन्हें छोड़ने का विधान है यद्यपि स्मृति चन्द्रिका, चतुर्विंशति मत संग्रहादि में 3 और 5 तक ही सपिंडता मानी गई हैं कई पौराणिक ग्रन्थों में तो सपिंडता का और भी अधिक संकोच करते हुए मामा की लड़की इत्यादि से भी विवाह को उचित माना गया है और दाक्षिणात्यों में कई स्थानों पर वैसी ही प्रथा है। इसलिए कोड बिल में मध्यमार्ग को ग्रहण किया गया है। यदि 3 और 5 पीढ़ियों के स्थान पर मातृकुल और पितृकुल की क्रमश: 5 और 7 पीढ़ियों को छोड़ा जाय तो अधिक शास्त्रीय होगा इसमें सन्देह नहीं। किंतु यह कहना कि इस कोड बिल के अनुसार भाई बहिन का विवाह भी वैध समझा जायेगा, जैसे कि कोड विरोधी लोगों ने कुछ पत्रों और पोस्टर आदि में प्रकाशित किया था सर्वथा असत्य है, यह तो स्पष्ट ही है। मेरे विचारानुसार शास्त्रीय विवाह के नियमों में यदि दोनों पक्ष परस्पर सपिण्ड नहीं हैं। इसके बाद धारा 7 उपधारा 5 में यह जो अपवाद रखा गया है कि यदि पारस्परिक आचार-परम्परा के अन्तर्गत दोनों पक्षों में ऐसा संस्कार वैध या जायज मानने की प्रथा न हो ये शब्द भी उड़ा देने चाहिए जिससे एकरूपता की रक्षा के अतिरिक्त सपिण्डों अथवा निकट सम्बन्धियों में विवाह के निषेध विषयक शास्त्रोक्त वैज्ञानिक आज्ञा का पालन हो सके।

अनेक हिंदू कोड बिल विरोधी कितने असत्य और छल का आश्रय ले रहे हैं इसका एक और अति स्पष्ट उदाहरण दिए बिना मैं नहीं रह सकता। ऊपर शास्त्रीय विवाह की शर्तो के विषय में मैंने जिस धारा संख्या 7 को उद्धत किया है उसमें चौथी शर्त मूल अंग्रेजी में इन शब्दों में है (4) The parties are not within the degrees of prohibited relationship हिन्दू कोड विरोधी समिति कलकत्ता ने हिन्दू कोड बिल का जो कुछ अनुवाद हिंदी में छपाया उसमें पृ. 5 पर इसका अनुवाद इस प्रकार दिया:-

दोनों ही पक्ष (वर-वधू) निषिद्ध सम्बन्ध के क्रम मे आते हों। मूल का अर्थ 'निषिद्ध सम्बन्ध के क्रम में न आते हों' यह है। किन्तु अनुवादक महाशय जनता में उसके विरुद्ध भावना भरने के लिए उसके "न" को खाकर अनुवाद कर बैठे हैं कि शास्त्रीय विवाह वह होगा जहां दोनों पक्ष निषिद्ध सम्बन्ध के क्रम में आते हैं। यह मानना बड़ा कठिन है कि यह छापे की भूल है। मुझे तो इसमें स्पष्ट ही शरारत प्रतीत होती है। इस अनुवाद के अन्तिम पृष्ठ पर लिखा है 'प्रत्येक हिंदू चेत जाए। हिंदू कोड बिल हिंदू समाज और

संस्कृति का तख्ता ही उलट देने का भयानक कुचक्र है।' मैं इस बात का निर्णय पाठकों पर छोड़ना चाहता हूं कि क्या ऐसे असत्य से हिंदू समाज और संस्कृति की रक्षा हो सकती है?

बहुविवाह का पति-पत्नी दोनों के लिए निषेध करके वस्तुतः **"जाया पत्ये मधुमतीं वाचं वदतु शान्तिवाम्" "इहेमाविन्द्र संनुद चक्रवाकेव दम्पती"** इत्यादि वेद मंत्रों में स्पष्टतया निर्दिष्ट एक विवाह के आदर्श की ही समर्थन किया गया है। **"संमतपन्त्यभितः सपत्नीरिव पर्शवः"** इत्यादि वेद-मंत्रों में सपत्नीत्व को अत्यन्त दुःखदायक बताया गया है। दुर्भाग्यवश कुछ शिक्षित युवक-युवतियों में भी यह बहुविवाह की प्रवृत्ति बढ़ रही थी और उसके भयंकर परिणाम दृष्टिगोचर हो रहे थे अतः इस प्रकार का प्रतिबन्ध आवश्यक ही था। वर्तमान हिंदू कानून के अनुसार पुरुष जितने चाहे विवाह कर सकता था जिसके कई उदाहरण देहली के सम्पन्न तथा प्रतिष्ठित समझे जाने वाले व्यक्तियों में भी विद्यमान है। एक पत्नी के होते हुए दूसरा विवाह करना प्रथम पत्नी को विष देने के समान है यह लिखने की आवश्यकता नहीं।

न्यूनतम आयु के विषय में यहां वर-वधू के लिए 18 और 14 को नियत किया गया है जिसे हम सर्वथा अपर्याप्त समझते हैं। हमारे विचार में तो 24 और 16 से कम विवाहार्थी वर-वधू की आयु न होनी चाहिए। **'अष्टवर्षा भवेद् गोरी'** जैसे वेद विरुद्ध श्लोकों को मानने वाले इस अंश का भी विरोध करें तो कोई आश्चर्य की बात नहीं।

विवाह विषयक इन धाराओं में जातिमूलक भेदभाव को जो स्वीकार नहीं किया गया इस से कई कट्टरपन्थी भले ही अप्रसन्न हों किन्तु जो विचारशील लोग हैं जानते हैं कि इस कृत्रिम, जन्ममूलक जातिभेद ने किस प्रकार हिन्दू समाज को 8 हजार के लगभग जातियों-उपजातियों में विभक्त कर के उस की एकता, संगठन और परस्पर प्रेम को नष्ट कर रक्खा है तथा किस प्रकार यह जाति-भेद **'अज्येष्ठासो अकनिष्ठास एते संभ्रातरो वावृधुःसौभगाय।'** (ऋ. 5/56/5) **'शूद्रो ब्राह्मणतामेति, ब्राह्मणश्चैति शूद्रताम्** (मनु 10/46), **न जात्या ब्राह्मणश्चात्र, क्षत्रियो वैश्य एव न । न शूद्रो न च वै म्लेंच्छो भेदिता गुणकर्मभिः॥'** शुक्रनीति, **'न कुलेन न जात्या वा, क्रियाभिर्ब्राह्मणो भवेत्।'** (महाभारत वनपर्व) इत्यादि शास्त्रीय वचनों के सर्वथा विरुद्ध है जहां वर्णव्यवस्था को केवल गुण कर्मानुसार बताया गया है तथा जन्म की दृष्टि से सब मनुष्यों की समानता का प्रतिपादन है उन्हें इससे जरा भी दुःख न होगा । वर्ण-व्यवस्था को गुणकर्मानुसार मान लेने पर (जिस सिद्धांत की सनातनता की घोषणा गत वर्ष काशी आदि स्थानों की, विद्वन्मंडली भी कर चुकी है) विवाह में जाति का प्रश्न ही नहीं उठ सकता। वस्तुतः अन्तरजातीय विवाहों के समर्थन में अनेक शास्त्रीय वचनों और ऐतिहासिक उदाहरणों को प्रस्तुत किया जा सकता है किंतु विस्तारभय से मैं यहां ऐसा करना अनावश्यक समझता हूं। जो भाई जन्म-मूलक जातिभेद को मानते हैं, इस कोड में उन के लिए कोई प्रतिषेध नहीं है। उनकी अपने विश्वासानुसार विवाहादि करने की पूर्ण स्वतन्त्रता है।

इस प्रस्तुत कोड में सगोत्र विवाह का प्रतिपादन किया गया है यह कह कर हिन्दू जनता को इसके विरुद्ध प्राय: भड़काया जाता है, किंतु इस में कोई ऐसी धारा नहीं है जहां सगोत्र विवाह का प्रतिपादन या समर्थन हो। केवल एक धारा स. 27 है जिसका शीर्षक "पहले विवाहों के विषय में छूट" यह है, जिस में कहा गया है कि "ऐसा विवाह जो कि इस कोड के आरम्भ होने से पहले दो हिन्दू में सम्पूर्ण हो चुका है और जो कि किसी दूसरे तौर पर जायज वा वैध है वह नाजायज नहीं होगा और कभी भी केवल इस हेतु तथा हकीकत पर नाजायज या अवैध न हों विचारा जायेगा कि दोनों पक्ष समान गोत्र अथवा समान प्रवर रखते थे अथवा भिन्न जाति अथवा समान जाति में से विभक्त उपजाति से सम्बन्ध रखते थे।

यह धारा इस कोड के प्रारम्भ से पूर्व सम्पन्न विवाहों के विषय में है। कहां तो एक ओर हिन्दू कोड बिल के विरोधी सनातन धर्म के नाम पर विवाह सम्बन्ध की अच्छेद्यता की दुहाई देते हैं और कहां वे ऐसी धारा का विरोध व खण्डन करते हैं जिस में केवल सगोत्रता वा जाति-भिन्नता के आधार पर पूर्व सम्पन्न विवाहों को अवैध मानने से इन्कार किया गया है यह परस्पर-विरुद्धता आश्चर्यजनक है।

हम स्वभावत: यह चाहते हैं कि सब लोग शास्त्रीय विवाह ही करें और इसी के लिए हम सब को उसका महत्त्व बुद्धिपूर्वक समझा कर प्रेरित करना चाहिए किंतु जो ऐसा किसी कारणवश नही करना चाहते उनके लिए सिविल विवाह की पूर्वोद्धृत शर्तों के अनुसार ही व्यवस्था की गई है केवल इतनी शर्त उसमें और जोड़ी गई है कि 'विवाह के दोनों पक्षों में यदि वर अथवा वधू आयु के 21 वर्ष पूरे नहीं कर चुके तो ऐसी स्थिति में इस विवाह की स्वीकृति प्राप्त कर ली गई हो' सिविल विवाह का भी यह अर्थ इस कोड के अनुसार नहीं है कि उसमें कोई धार्मिक विधि व क्रिया न हो। धारा 18 खंड 2 में स्पष्ट लिखा है कि विवाह किसी भी रीति अनुसार सम्पूर्ण हो सकेगा किंतु शर्त यह है कि यह विवाह तब तक पूर्ण और पक्षों को कानूनी बन्धन में जकड़ने वाला नहीं होगा जब तक कि प्रत्येक पक्ष रजिस्ट्रार और 3 साक्षियों के सम्मुख ऐसा नहीं कहता कि मैं मुझको अपनी कानूनसंगत पत्नी (अथवा पति) बनने के लिए ग्रहण करता (या करती) हूँ।

वस्तुत: विवाह मन्त्रों में यह भाव स्पष्टतया समाविष्ट है। एक मुख्य बात यह है कि अब सिविल विवाह के लिए पूर्ववत् यह कहने की आवश्यकता न होगी कि मैं हिन्दू धर्म या अन्य किसी स्वीकृत धर्म को मानने वाला नहीं।

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(हिन्दू कोड बिल पर कुछ विचार-3)

विवाह-विच्छेद की परिस्थितियां

पं. धर्मदेव विद्यावाचस्पति

इस तृतीय लेख में मैं विवाह संबन्ध विच्छेदादि विषयक धाराओं पर कुछ विचार करना चाहता हूँ जो मुख्यतया निम्न हैं–

धारा 30––कोई ऐसा विवाह, चाहे वह इस कोड में आरम्भ होने से पहले अथवा बाद में सम्पूर्ण हो चुका है, निम्नांकित आधारों में से किसी एक के कारण खत्म हो जायेगा।

(1) यदि ऐसे विवाह के समय पर और तब से लेकर लगातार इस सम्बन्धी अदालती कार्यवाही के आरम्भ तक विवाह के दोनों पक्षों में से कोई एक नपुंसक था।

(2) यदि पति किसी स्त्री को रखेली के रूप में रख रहा है अथवा पत्नी किसी पर पुरुष की रखेली बन कर रह रही है या वेश्या का जीवन व्यतीत कर रही है।

(3) यदि विवाह के दोनों पक्षों में से कोई पक्ष दूसरा धर्म ग्रहण कर लेता है और हिन्दू धर्म को त्याग देता है।

(4) यदि विवाह के दोनों पक्षों में एक पक्ष असाध्यरूप में उन्मत्त या पागल है और ऐसे प्रार्थनापत्र के देने के पहले निरन्तर पांच वर्ष के लिए उसका इलाज किया जा चुका है।

(5) यदि दोनों पक्षों में कोई एक बड़े भयानक और असाध्य प्रकार के कुष्ठ से पीड़ा उठा रहा है।

पूर्व इसके कि मैं इस अत्यन्त विवादास्पद और गंभीर विषय पर वैयक्तिक रूप से अपने विचार जनता के सामने रखूं, मैं यह स्पष्ट कर देना आवश्यक समझता हूं कि वैदिक आदर्श के अनुसार पति पत्नी सम्बन्ध-विच्छेद नहीं होना चाहिए। पाणिग्रहण से समय जो मन्त्र **'गृभ्णामि ते सौभगत्वाय हस्तं मया पत्या जरदष्टिर्यथासः । भगो अर्यमा सविता पुरन्धिमह्य त्वादुर्गार्हपत्याय देवाः।** (ऋ. 10, 85, 36) **'मभेयमस्तु पोष्या मह्य त्वादाद् वहस्पतिः । मया पत्या प्रजावती संजीव शरदः शतम् ॥** (अथर्व 14, 1, 52)

इत्यादि मन्त्र पढ़े जाते हैं उनमें वर वधू को संबोधित करते हुये स्पष्ट कहता है कि मैं तुम्हारे हाथ को सौभाग्य की वृद्धि के लिए ग्रहण कर रहा हूँ, तुम मेरे साथ वृद्धावस्था पर्यन्त सुखपूर्वक निवास करो। तुम मेरी पोष्या या भार्या हो। परमात्मा ने तुम्हें मुझे दिया है। मुझ पति के साथ तुम 100 वर्ष पर्यन्त सुख शान्ति पूर्वक रहो।

(1) **''आ नः प्रजां जनयतु प्रजा पतिराजसाय समनक्त्वर्यमां। अदुर्भमंलीः पतिलोकमाविश शं नो भव द्विपदे शं चतुष्पदे॥"** (ऋ. 10/85/43)

(2) **"इहैवस्तं माविर्यौष्ट विश्वमायुर्व्यश्नुतम्।**

क्रीड़न्तो पुत्रैर्नप्तृभिर्मोदमानौ स्वे गृहे॥" (ऋ. 10/85/42)

इत्यादि विवाह सूक्त के अन्य मन्त्रों में भी यह स्पष्टतया कहा गया है कि परमात्मा हमें वृद्धावस्था पर्यन्त सदा मिलाये रक्खे। हे पति-पत्नि! तुम दोनों यहां रहो। (माविर्यौष्टम्)

तुम्हारा एक दूसरे से कभी वियोग व विरोध न हो अथवा तुम एक दूसरे का परित्याग न करो। घर में प्रसन्न होकर सम्पूर्ण आयु को आनन्दपूर्वक बिताओ, इत्यादि।

वैदिक आदर्श के अनुसार निम्न नियम आवश्यक हैं—

(1) कम से कम 24 वर्ष तक पुरुष और 16 वर्ष तक कन्या पूर्ण ब्रह्मचर्य का पालन करें तभी एक दूसरे की प्रसन्नता से गृहस्थाश्रम में प्रवेश करें।

(2) विवाह युवावस्था में स्वयंवर रूप में होना चाहिये, जब परस्पर दृढ़ कामना हो तभी विवाह होना चाहिए अन्यथा नहीं। यह भाव **'एयमगन् पति कामा जनिकामोऽहमागमम् ।'** (अथर्व वेद) **'वधूरियं पति मिच्छन्त्येति॥** (ऋ. 5/37/3) **'भद्रा वधूर्भवति यत्सुपेशा स्वयं सा मित्र वनुते जने चित् ॥** (ऋ. 10/27/12)

इत्यादि वेद मन्त्रों में स्पष्टतया प्रतिपादित है। दोनों अपने कर्तव्य और उत्तरदायित्व को जानते हुए परस्पर प्रसन्नतापूर्वक विवाह करते हैं।

(3) पुरुष को पत्नीव्रत धर्म का और स्त्री को पतिव्रत धर्म का भली भांति सदा पालन करना चाहिए। परस्पर पूर्ण विश्वास रखते हुए उन्हें धर्म, अर्थ, काम में पूर्ण सहयोग देना चाहिये।

यह लिखने की आवश्यकता नहीं कि इन वैदिक आदर्शों का पालन करते हुए विवाह सम्बन्ध विच्छेदादि का प्रश्न ही नहीं उठ सकता। किन्तु दुर्भाग्यवश इन आदर्शों और नियमों से जनता बहुत दूर जा चुकी है। न ब्रह्मचर्य का क्रम रहा, न वेदाध्ययनादि का और न अन्य वैदिक नियमों का पालन किया जाता है जिस से शारीरिक, मानसिक और आत्मिक शक्तियों का विकास हो सके। ऐसी दशा में प्रश्न उपस्थित होता है कि जो अवस्थाए धारा 30 में वर्णित हैं उन में क्या किया जाए।

मध्यकाल में जो भी स्मृतियां लिखी गईं तथा अन्य ग्रन्थ बनाऐ गऐ उन में वैदिक आदेशों के विरुद्ध बहुत सी बातें पाई जाती हैं जिन को प्रामाणिक मान कर बाल्य विवाह प्रचलित हो गया, स्त्रियों से वेदाध्ययन और यज्ञ का अधिकार छीन लिया गया, विवाह केवल माता पिता या अधिकतर अशिक्षित पुरोहित या नाई आदि की इच्छा से होने लगे जिनमें गुणकर्म स्वभाव के मेल का विचार न करके केवल जाति उपजाति की समानता का ध्यान रक्खा गया। ऐसी अवस्था में जो शोचनीय परिस्थिति उत्पन्न हो गई उसको सुधारने की आवश्यकता से कोई विचारशील व्यक्ति इन्कार नहीं कर सकता। बाल्य विवाह का ही कुपरिणाम बाल्य मरण, निर्वीर्यता व नपुंसकता आदि के रूप में दृष्टिगोचर होता है। पति-पत्नी के कलह तथा पतियों द्वारा विवाहित पत्नियों के त्याग, उन से क्रूरतापूर्ण व्यवहार अथवा पुनर्विवाह आदि के सैकड़ों नहीं हजारों उदाहरण किसी भी नगर में सुगमता से पाये जा सकते हैं। ऐसी अवस्था में क्या वैदिक आदर्शों अथवा सनातन धर्म की दुहाई देने से काम नहीं चल सकता है? इस प्रश्न पर समाज-हितैषियों को गम्भीरता से विचार करना चाहिए। इस बात का भी ध्यान रखना चाहिए कि जिस प्रतिकार का अवलम्बन किया जाए वह कहीं वर्तमान अवस्था को और भी बिगाड़ने वाला न हो।

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(हिन्दू कोड बिल पर कुछ विचार-4)

विवाह-विच्छेद और स्मृति आदि ग्रंथ

पं. धर्मदेव विद्यावाचस्पति

प्राय: कहा जाता है कि विवाह सम्बन्ध विच्छेद (जिसे साधारणतया तलाक के नाम से कहते हैं) हिन्दू धर्म तथा हिन्दू समाज की भावना के सर्वथा विरुद्ध तथा उसके लिए सर्वथा नवीन प्रथा है जिसको इस बिल द्वारा हिन्दू समाज पर लादा जा रहा है। यही बात भारतीय राष्ट्र भारतीय राष्ट्र संसद (पार्लियामेंट) में पं. लक्ष्मीकान्त मैत्रादि अनेक सज्जनों ने बार बार कही थी किन्तु स्मृतिग्रन्थों तथा मध्यकालीन अन्य साहित्य का निष्पक्षपात अनुशीलन करने पर इसकी असत्यता स्पष्ट ज्ञात है। जैसे कि इस लेख के प्रारम्भिक भाग में मैं दिखा चुका हूँ वैदिक आदर्शों का अनुकरण करते और विवाह विषयक वैदिक नियमों का पालन करते हुए तो विवाह सम्बन्ध विच्छेद का प्रश्न ही नहीं उठ सकता किन्तु उन आदर्शों से दूर होने और वेद विरुद्ध प्रथाओं के अनुसरण के कारण जो शोचनीय अवस्था उत्पन्न हो चुकी है हमें तो इस समय उसपर विचार करना है। निम्नलिखित स्मृत्यादि वचनों को इस सम्बन्ध में ध्यान में रखना चाहिए। सब से पूर्व मैं उस स्मृति वचन को उद्धृत करता हूं जो सुप्रसिद्ध है :

(1) **''नष्टे मृते प्रव्रजिते, क्लीबे च पतिते पतौ । पंचस्वापत्सु नारीणां, पतिरन्यो विधीयते॥''**

यह श्लोक पराशरस्मृति के अ. 4 का श्लोक 30 है। पराशरस्मृति के **'कलौ पाराशर: स्मृत:'** अथवा **'कलौ पराशरी स्मृति: ॥'** इत्यादि के अनुसार इस कलियुग में हमारे पौराणिक भाई जो हिन्दू कोड बिल का विरोध कर रहे हैं सब से अधिक प्रामाणिक मानते हैं। इस श्लोक का अर्थ स्पष्ट है कि—

पति के नष्ट हो जाने (उनके गुम हो जाने अथवा उसके विषय में कोई समाचार ज्ञात न होने), मर जाने, संन्यासी हो जाने, नपुंसक होने अथवा पतित हो जाने पर—इन पांच आपत्तियों में स्त्रियों के लिए दूसरे पति का विधान किया जाता है।

हिन्दू धर्म का परित्याग करके मुसलमान व ईसाई हो जाना श्रद्धालु हिन्दुओं की दृष्टि में पतित हो जाना है! अत: धारा 30 में वर्णित अनेक बातों का इसे आधार कहा जा सकता है इसमें कोई सन्देह नहीं।

मुझे मालूम है कि पौराणिक भाष्यकार तथा भाई इस श्लोक के 'पतौ' का अर्थ विवाहित पति नहीं किन्तु उत्पत्स्यमानपति' या भावी पति करके इस श्लोक का सम्बन्ध विवाह संस्कार से पूर्व केवल वाग्दान की अवस्था में मानते हैं और व्याकरण की दृष्टि से तोड़ मरोड़ कर ऐसा अर्थ करने का दु:साहस करते हैं। किन्तु **'पति: अन्यो विधीयते'** इन शब्दों से जिनका अर्थ सिवाय इसके कोई हो ही नहीं सकता कि दूसरे पति का विधान किया जाता है उनके इस प्रयत्न की निस्सारता सिद्ध होती है। यहां 'पतौ' इसको आर्षप्रयोग मानना ही उचित है। इस पर भी यदि किसी को सन्देह हो तो नारदीय मनुसंहिता अध्याय 12 के श्लोक 99 को देखना चाहिए जो निम्न शब्दों में है :

''पत्यौ प्रव्रजिते नष्टे, क्लीबेऽथ पतिते मृते। पंचस्वापत्सु नारीणां, पतिरन्यो विधीयते॥''

(देखो नारदीय मनुसंहिता भवस्वामिभाष्यसंहिता साम्बशिवशास्त्रिणा सम्पादिता त्रिवेन्द्रम् सन् 1929 पृ. 144) यहां उसी ऊपर उद्धृत श्लोक को ही थोड़े से शब्दभेद से दिया गया है। मुख्य बात यह कि 'पत्यौ' शब्द का प्रयोग है जो लौकिक व्याकरण की दृष्टि से भी सर्वथा ठीक है। इसका अर्थ वही है जो ऊपर दिया जा चुका है। वृद्ध मनुस्मृति अ. 9 पृ. 111 में भी यह श्लोक पाया जाता है। अग्निपुराण अ. 154 में भी यही श्लोक पराशर स्मृति के पाठ के अनुसार विद्यमान है।

गौतम धर्म के सूत्र के मस्करिभाष्य में **अपतिरपत्यलिप्सुदेवरात्** 18/4 की व्याख्या में लिखा है।

अपतिः–अविद्यमान भर्तृका अयोग्यपतिर्वा तथा च बृहस्पतिः 'नष्टे मृते प्रव्रजिते, क्लीबे च पतितेपतौ। पंचस्वापत्सु नारीणां पतिरन्यो विधीयते' इति।

(देखो पं. लक्ष्मण शास्त्री जोशी तर्कतीर्थ पूना द्वारा सम्पादित "धर्मकोष" व्यवहार कांड पृ. 1012) इससे ज्ञात होता है कि बृहस्पति स्मृति में भी यह श्लोक पाया जाता था जो स्मृति इस समय सम्पूर्णतया उपलब्ध नहीं होती।

इनके अतिरिक्त चौखम्बा संस्कृत ग्रन्थमाला कार्यालय बनारस से मनुस्मृति कुल्लूक भाष्य सहित संवत् 1992 में प्रकाशित हुई थी उसके अन्त में वर्तमान मनुस्मृति में अविद्यमान किन्तु अन्य ग्रन्थों में मनु के नाम से वर्णित श्लोकों को 'स्मृति चन्द्रिका' नामक सुप्रसिद्ध निबन्ध ग्रन्थ के आधार पर उद्धृत किया गया है जिससे प्रतीत होता है कि पहले मनुस्मृति में भी यह श्लोक पाया जाता था। जो श्लोक इतनी स्मृति-पुराणादि में पाया जाता हो उसको ऐसे ही टाला नहीं जा सकता।

(2) मनुस्मृति अ. 9 श्लोक 72 भी इस सम्बन्ध में विचारणीय है जो निम्न लिखित है :

"विधिवत् प्रतिगृह्यापि, त्यजेत्कन्यां विगर्हिताम्, व्याधिताम् विप्रदुष्टां वा, छद्मना चोपपादिताम्।" इसका अनुवाद साधुचरणप्रसाद जी ने वेंकटेश्वर प्रेस, बम्बई में मुद्रित ध र्मशास्त्र संग्रह के पृष्ट 193 में इस प्रकार दिया है–

"वर को उचित है कि अलक्षण दोष वाली रोगिणी, मैथुन संसर्ग वाली अथवा ठगहारी करके दी हुई कन्या को विधिपूर्वक ग्रहण करके भी त्याग देवे।"

(3) नारदीय मनुसंहिता 12/32 में लिखा है :

"यस्तु दोषवती कन्याम्, अनाख्याय प्रयच्छति। दोषे तु सति नागः स्यात्, अन्योन्यं त्यजतोस्तयोः॥" साधुचरणप्रसाद जी ने धर्मशास्त्र संग्रह पृ. 194 में इसका अनुवाद यों दिया है:–

"यदि कन्या के दोष को छिपाकर वर को कन्या दी जाए तो वर कन्या को त्याग देवे और वर के दोष को छिपाकर कन्या से विवाह किया जाए तो कन्या वर को त्याग देवे इस में कोई अपराधी न होगा।" (धर्मशास्त्रसंग्रह पृष्ठ 194)।

प्रस्तुत हिन्दू कोड बिल में भी इस प्रकार धोखे से कराये गये विवाह को अवैध माना गया है जिस का आधार उपर्युक्त वचन प्रतीत होते हैं।

(4) मनुस्मृति अ. का निम्नलिखित श्लोक भी इस सम्बन्ध में विशेष विचारणीय है:

"प्रोषितो धर्मकार्यार्थं, प्रतिक्ष्योष्टौ नरः समाः । विद्यार्थं षड्शोऽर्थ वा, कामार्थ त्रींस्तु वत्सरान्॥

वन्धाष्टमेऽधिवेद्याब्देदशमे तु मृतप्रजा । एकादशे स्त्रीजननीं सद्यस्त्वप्रियवादिनी॥"

(मनु अ. 9/76/81)

इस का अर्थ महर्षि दयानन्द जी ने सत्यार्थप्रकाश के चतुर्थ समुल्लास में इस प्रकार दिया है:

"पुरुष के लिए भी नियम है कि वन्धया हो तो आठवें (विवाह से 8 वर्ष तक स्त्री को गर्भ न रहे) सन्तान होकर मर जावे तो दशवें जब जब हो तब तब कन्या ही हो पुत्र न हो तो ग्यारहवें वर्ष तक और अप्रिय बोलने वाली हो तो सद्य: उस स्त्री को छोड़ के दूसरी स्त्री से नियोग कर के सन्तानोत्पत्ति कर लेवे। वैसे ही जो पुरुष अत्यन्त दुखदायक हो तो स्त्री को उचित है कि उस को छोड़ के दूसरे पुरुष से नियोग कर के सन्तानोत्पत्ति कर के उसी विवाहित पति के दायभागो सन्तान कर लेवे . . . इत्यादि सत्यार्थप्रकाश 27वीं वार पृ. 73

(5) मनुस्मृति 9/79 में लिखा है कि **उन्मत्तं पतितं क्लीवम् अबीजं पाप रोगिणम्। न त्यागोऽस्ति द्विषन्त्याश्च न च दायापवर्तनम्।**

भावार्थ यह है कि यदि स्त्री ऐसे पति से द्वेष करती है जो उन्मत्त (पागल) है, धर्म का त्याग करके पतित हो गया है, नपुंसक तथा कोढ़ आदि भयंकर रोग से ग्रस्त है तो उसको विशेष दोष या दण्ड नहीं दिया जा सकता।

प्रस्तुत हिंदू कोड बिल की धारा 30 में इसी प्रकार की शर्तें रखी गई हैं जैसे पाठक लेख के प्रारम्भ में उद्धृत वाक्यों में देख सकते हैं।

(6) कौटिल्य अर्थशास्त्र धर्मस्थीय अधिकरण 3 अध्याय 2 में चाणक्य ने लिखा है:–

"नीचत्वं परदेशं वा प्रस्थितो राजकिल्विषी । प्राणाभिहन्ता पतितः, त्याज्यः क्लीवोऽथवापतिः॥"

"परस्परं द्वेषान्मोक्षः" धर्मस्थीय अ. 3/4/19

अर्थात् पति यदि नीच और पतित हो गया हो, परदेश चला गया हो (और उसके विषय में कुछ ज्ञात न हो तो नियत अवधि तक मनु के अनुसार जो अधिक से अधिक 8 वर्ष है प्रतीक्षा कर के) धार्मिक राजा से द्रोहादि भयंकर अपराधी, हत्यारा अथवा नपुंसक हो तो वह त्याज्य है।

परस्पर द्वेष से पति पत्नी का त्याग या सम्बन्ध विच्छेद हो सकता है।

(2) यम स्मृति, कात्यायनादि से इसी प्रकार अन्य भी अनेक वचन उद्घृत किये जा सकते हैं किंतु इस विषय पर विचार पहले ही लम्बा हो गया है अत: उन्हें उद्घृत करते

हुए मैं यह निवेदन करना चाहता हूं कि हमें अपनी सामाजिक व्यवस्था को ऐसा सुधारना चाहिये कि सम्बन्ध विच्छेदादि का विचार भी कभी विवाहित पति-पत्नी के मन में उत्पन्न न हों पत्नीव्रत और पातिव्रत धर्म का पालन जो हमारी प्राचीन संस्कृति के मुख्य तत्त्व हैं—यदि पति-पत्नी करें तो इस प्रकार के विधान सर्वथा अनावश्यक हो जाएं। सब समाज-हितषियों को मिल कर ऐसा ही प्रयत्न करना चाहिये। अत्यन्त विशेष आपत्ति, आकस्मिक मरण, असमर्थतादि में प्राचीन नियोग पद्धति का आश्रय लिया जा सकता है, किन्तु वर्तमान परिस्थिति में यदि इसे व्यावहार्य न माना जाय तो अत्यन्त विकट और जटिल अवस्थाओं में जहां अन्य कोई चारा ही न हो, सम्बन्ध विच्छेद की अनुमति अन्तिम साधन के रूप में दी जा सकती है पर उसकी शर्तों को अत्यधिक कठोर बनाना चाहिए ताकि उसका दुरुपयोग न हो सके। पाश्चात्य देशों में तलाक को जो अत्यन्त सुलभ बना दिया गया है उसके कारण नैतिकता व सदाचार का अत्यन्त ह्रास हो रहा है जो अवस्था अत्यन्त निन्दनीय है अत: हमें उसका अनुकरण न करना चाहिए। अत: जो धारा 30 मैंने इस लेख के प्रारम्भ में उद्धृत की थी उसमें निम्न संशोधन मुझे अत्यावश्यक प्रतीत होते हैं:

(1) ऐसा नियम बना दिया जाय कि विवाह के 8 वर्ष बाद तक कोई सम्बन्ध विच्छेद के लिए प्रार्थनापत्र नहीं दे सकता और न किसी को ऐसी अनुमति उस अवधि तक दी जायेगी। विश्वस्त-सूत्र से ज्ञात हुआ है कि 5 वर्ष की अवधि को इस बिल के प्रस्तोता संशोधन के रूप में स्वयं स्वीकार करने को उद्यत हैं यदि उसे 8 वर्ष तक बढ़ा दिया जाय तो अधिक अच्छा हो। इस बीच में बहुत अधिक सम्भावना यही है कि पति-पत्नी एक दूसरे के स्वभावादि से परिचित होकर सम्बन्ध-विच्देदादि का विचार भी न करेंगे।

(2) नपुंसकता, पागलपन, कुष्ठ इत्यादि की चिकित्सा के लिए भी 8 वर्ष की अवधि देना उचित है। यदि भली-भांति चिकित्सा और सेवा-शुश्रूषा करने पर भी लाभ न हो और पति-पत्नी सम्बन्ध-विच्छेद पर ही उतारू हों तो इस 8 वर्ष की अवधि के पश्चात् उसकी अनुमति दी जा सकती है।

विवाह-विच्छेद विषयक धारा 30 के अतिरिक्त धारा 33 में 'अदालत अलहदगी' के विषय में कहा गया है कि:

"विवाह के दोनों पक्षों में से कोई भी व्यक्ति चाहे ऐसा विवाह इस कोड के आरम्भ काल से पहले अथवा पीछे सम्पूर्ण हो चुका है जिला अदालत को इस आधार पर अदालती अलहदगी की डिग्री प्राप्ति के लिये प्रार्थना कर सकता है कि दूसरा पक्ष—

(अ) प्रार्थी को एक ऐसे समय से छोड़ चुका है कि जिसकी अवधि 2 वर्ष से कम नहीं है।

(इ) ऐसे जुल्म या अत्याचार का दोषी हो चुका है कि जिस के फलस्वरूप प्रार्थी उक्त पक्ष के साथ रहने में भयभीत हो चुका है अथवा

(उ) असाध्य, सोजाक, आत्यंतिक व्याधि से पीड़ित हो रहा है जो कि प्रकट अवस्था में है तथा जो कि उसे प्रार्थी की ओर से नहीं लगी है तथा इतने समय से वह इस व्याधि से पीड़ित है जिसकी अवधि उस प्रार्थना-पत्र देने के सन्निहित काल से आरम्भ करके एक वर्ष से कम नहीं है।

(ऋ) एक भयानक प्रकार से कुष्ठ (कोढ़) से पीड़ित हो रहा है अथवा

(ए) विवाह की तारीख से लेकर उसे लगातार स्वाभाविक पागलपन हो चुका है अथवा

(ओ) दाम्पत्य काल के दौरान में व्यभिचार कर चुका है।"

इन नियमों में भी 1 और 2 वर्ष की अवधि के स्थान पर कम से कम 5 वर्ष की अवधि रखनी चाहिए। यह अदालती अलहदगी, संपूर्ण तथा विवाह विच्छेद से भिन्न है अत: न्यायाधीशों तथा अन्यों को ऐसा प्रयत्न करना चाहिये जिससे दम्पती प्रेमपूर्वक साथ रहने को पुन: उद्यत हो जाएं।

पातिव्रत धर्म के महत्त्व के विषय में जो कहा जाता है वह ठीक ही है और इसमें सन्देह नहीं कि वह हमारी संस्कृति और सभ्यता के लिए विशेष गौरव की वस्तु है जिसकी जितनी भी प्रशंसा की जाए थोड़ी है। दु:ख की बात यही है पत्नीव्रत धर्म के महत्त्व पर हिन्दू समाज में उतना बल नहीं दिया जाता अन्यथा इतनी शोचनीय दशा न होती, और न इस प्रकार के नियमों की कोई आवश्यकता होती। बड़ौदा में सन 1931 से हिन्दू डाइबोर्स लॉ अथवा सम्बन्ध विच्छेद की अनुमति का कानून विद्यमान है, किन्तु तब से अब तक उन जातियों की ओर से जहां पहले तलाक की प्रथा न थी केवल 43 की केस हुए हैं जिन में मुख्य आधार पति की ओर से क्रूरता और परित्याग ही था।

अत: इन उपर्युक्त धाराओं की भी न जानते हुए अज्ञ जनता में उत्तेजना उत्पन्न करने के लिए जो यह फैलाया जा रहा है कि इस बिल के अनुसार जब इच्छा होगी पति-पत्नी एक दूसरे का परित्याग कर देंगे और इस प्रकार हिन्दू जाति और उसकी संस्कृति का नाश हो जायेगा, यह बात सर्वथा असत्य है।

धारा 34 में स्पष्ट कहा गया है कि "कोई भी विवाह तब तक कानूनी तौर पर परित्यक्त हुआ नहीं विचारा जायेगा जब तक कि उस पर किसी समुचित आदालत द्वारा यह घोषित करते हुए डिग्री नहीं दी जाती कि ऐसा विवाह या तो विवाह-विच्छेद के लिये दिये प्रार्थना-पत्र पर खतम किया गया है अथवा किसी अन्य ऐसी कानूनी कार्यवाही में समाप्त किया गया है जिसमें विवाह का जायजपन (वैधता) विचारणीय विषय था।"

धारा 44–विवाह समाप्ति सम्बन्धी प्रत्येक डिग्री जो जिला जज द्वारा दी गई है वह हाईकोर्ट द्वारा पक्का होने का विषय होगी। इत्यादि इन नियमों का दुरुपयोग किसी भी अवस्था में न होने पाए और इन्हें नर्म न बना दिया जाय (जैसे कि पाश्चात्य देशों में है) यह चेतावनी देना आवश्यक है। "भारत में लगभग 90 प्रतिशत जातिभेद की दृष्टि से शूद्रों में आते हैं। जिनमें सम्बन्ध-विच्छेद की प्रथा किसी न किसी रूप में प्रचलित है", यह माननीय डा. अम्बेडकर का कथन कहां तक ठीक है यह मुझे ज्ञात नहीं। सम्भवत: इसमें कुछ अत्युक्ति हो। जातिभेद की अनिश्चितता के कारण भी ऐसा संभव है तथापि इसे मैं तलाक की प्रथा को उत्तम समझने अथवा उसे अपनाने की युक्ति के रूप में मानने को उद्यत नहीं। हां सर्वथा अन्तिम साधन के रूप में उपायान्तर न होने पर ही उसकी अनुमति अति विशेष अवस्थाओं में दी जा सकती है। मैंने ये बातें समस्त हितैषियों के विचारार्थ लिखी हैं। आशा है समाजहित और शास्त्रीय वचनों को ध्यान में रखते हुए इन पर विद्वान् लोग निष्पक्ष होकर विचार करेंगे। यदि वर्तमान शोचनीय परिस्थिति का अन्य कोई प्रतिकार हो सकता है तो उसका भी निर्देश करेंगे।

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(हिन्दू कोड बिल पर विचार-5)

दत्तक विधान और संरक्षकता

पं. धर्मदेव विद्यावाचस्पति

हिन्दू कोड बिल के तृतीय भाग में दत्तक विधान अथवा गोद लेने विषयक नियम हैं और चतुर्थ भाग में अल्पवयस्कता (नाबालिगपन) और संरक्षकतादि विषयक। इन दोनों भागों में वर्णित मुख्य-मुख्य धाराओं पर मैं इस लेख में संक्षिप्त विचार करूंगा।

अभी तक हिन्दुओं में गोद लेने विषयक भिन्न-भिन्न प्रकार रहे हैं। भाग 3 में उन्हें एकरूपता देने का यत्न किया गया है जो प्रशंसनीय है।

'गोद लेने के विषय में योग्यता' शीर्षक की धारा 54 में कहा गया है कि कोई भी ऐसा कि हिन्दू पुरुष जिसके होश व हवास (स्वस्थ मानसिक अवस्था) कायम है। और अपनी आयु के 18 वर्ष पूरे कर चुका है, वह पुत्र गोद (दत्तक) लेने की योग्यता रखता है।

किन्तु शर्त यह है कि कोई भी हिन्दू पुरुष अपनी पत्नी की अनुमति ग्रहण किये बिना गोद नहीं लेगा। मेरी सम्मति में दत्तक पुत्र लेने के लिए 18 वर्ष की आयु सर्वथा अपर्याप्त है। कम से कम 25 वर्ष की आयु का नियम रखना चाहिये। जैसा कि मैं इस लेखमाला के प्रथम लेख में बता चुका हूं इस कोड बिल के बनाने वालों ने हिन्दुत्व की रक्षा का ध्यान रखते हुए धारा 62 के अंश (3) में माता को दत्तक लेने का अधिकार दिया है, यदि बच्चे के पिता ने हिन्दू-धर्म को त्याग दिया हो।

यदि विधवा ने हिन्दू धर्म त्याग दिया हो तो धारा 61 के अंश (3) में उसके गोद लेने के अधिकार को समाप्त माना गया है। कोई भी हिन्दू धर्म प्रेमी इस भावना का अभिनन्दन किये बिना नहीं रह सकता।

'गोद लिये जाने की योग्यता' विषयक धारा 63 में बताया गया है कि कोई भी व्यक्ति तब तक गोद लिये जाने योग्य क्षमता नहीं रखेगा जब तक कि निम्नलिखित शर्तों के सम्बन्ध में तसल्ली नहीं हो जाती :

(१) वह हिंदू है।

(२) वह विवाहित नहीं है।

(३) वह पहले से ही गोद नहीं लिया जा चुका है।

(४) वह अपनी आयु के 15 वर्ष पूरे नहीं कर चुका है।

इनमें कोई ऐसी बात नहीं है जिस पर आक्षेप किया जा सके। एक महत्त्वपूर्ण बात यह है कि गोद लेने के विषय में वर्तमान हिंदू विधान (कानून) में विद्यमान जाति विषयक प्रतिबन्ध को हटा दिया गया है। वर्तमान कानून के अनुसार केवल उसी बालक को दत्तक के रूप में लिया जा सकता है जो गोद लेने वाले की अपनी जाति का हो । अब जाति-उपजातियों के प्रतिबंध को हटा दिया गया है। किंतु इतना ही प्रतिबंध रखा गया

है कि वह हिन्दू हो। इन शर्तों को न जानते हुए अथवा जान बूझकर भी कोड बिल विरोधियों की और से पत्रों में यह जो आन्दोलन किया गया, कि इसके अनुसार किसी भी व्यक्ति को चाहे वह मुसलमान व ईसाई भी क्यों न हो अब गोद लिया जा सकेगा, उसकी असत्यता स्पष्टतया ज्ञात होती है जाति विषयक प्रतिबन्ध की वस्तुतः इस विषय में कोई आवश्यकता व उपयोगिता नहीं, अतः आशा है उदार मनोवृत्ति वाले सभी समाजहितैषी इस धारा का वर्तमान रूप में स्वागत करेंगे। संकीर्ण मनोवृत्ति वाले कूपमंडूकों का तो इससे अप्रसन्न होना स्वाभाविक है किन्तु इस संकीर्णता से समाज और राष्ट्र की उन्नति असम्भव है। हां, जो अपनी कल्पित जाति-उपजाति तक दत्तक लेने के अधिकार को सीमित रखना चाहें उनको ये नियम ऐसा करने से रोकते नहीं, उन्हें पूर्ण स्वतन्त्रता है।

दत्तक विधान में एक मुख्य परिवर्तन जो प्रवर समिति ने किया है वह इस प्रकरण में उल्लेखनीय है। वर्तमान विधान के अनुसार दत्तक पुत्र विधवा की, जिस ने उसे गोद में लिया है, सारी सम्पत्ति पर अधिकार रख सकता था और इस के कारण बड़ी मुकदमेवाजी होती रहती थी और गोद लेने वाली विधवा की अवस्था बड़ी दयनीय हो जाती थी। अब धारा 68 में इस सम्बन्ध में कहा गया है कि : (1) जहां पर कि इस कोड के आरम्भ होने के बाद कभी विधवा गोद लेती है उस द्वारा गोद लिया हुआ पुत्रः–

(अ) उस विधवा या उस की सौत विधवाओं (यदि कोई है) द्वारा उसके गोद लेने वाले पिता के वारिस होने के रूप में ऐसी जायजाद में से, जो कि उस गोद लेने के कार्य के पहले सन्निहित काल में विद्यमान थी, उत्तराधिकार में प्राप्त की गई थी, उस का आधा लेगा।

आशा है विचारशील जनता द्वारा इस नवीन नियम का जो अनुभव से लाभ उठा कर विधवा के प्रति सहानुभूति की भावना से बनाया गया है, स्वागत व अभिनन्दन किया जायेगा।

नाबालिग और उसके संरक्षक के सम्बन्ध में जो धाराएं भाग 4 में दी गई हैं, उनके सम्बन्ध में अधिक लिखने की आवश्यकता नहीं। धारा 78 में हिन्दू नाबालिग (अल्पवयस्क) के स्वाभाविक संरक्षक के विषय में कहा गया है:–

किसी नाबालिग हिन्दू की निजता (फयतहण) तथा उसके साथ साथ उसकी सम्पत्ति के मामले में उसके स्वाभाविक संरक्षक हैं–

(आ) किसी बालक या अविवाहित कन्या के मामले में पिता और उस के बाद माता, किन्तु शर्त, यह है कि ऐसे नाबालिग का संरक्षण (धगतवहनख) जो कि अपनी आयु के तीन वर्ष समाप्त नहीं कर पाया है साधारणतया उसकी माता का होगा।

(इ) किसी नाजायज बालक अथवा अविवाहित कन्या के मामले में माता और उसके बाद पिता।

(उ) किसी विवाहित लड़की के मामले में उसका पति किन्तु शर्त यह है कि कोई भी ऐसा व्यक्ति इस धारा के विधानों के अधीन किसी नाबालिग का संरक्षक होने का अधिकार नहीं रखेगा।

(अ) यदि वह हिन्दू धर्म को त्याग चुका है।

(इ) यदि वह पूर्णतया और अन्तिम रूप में धारा 110 की उपधारा (1) में वर्णित रीतियों में से किसी रीति अनुसार संसार को त्याग चुका है।

धारा 81 में बताया गया है कि जहां स्वाभाविक संरक्षक हिन्दू धर्म को त्याग चुका है वहां उसकी अधिकार सत्ता का खंडन हो जायेगा। धारा 83 में बताया गया है कि किसी नाबालिग हिन्दू के संरक्षक का कर्तव्य होगा कि वह ऐसे नाबालिग का हिन्दू के रूप में पालन पोषण करे कोई भी हिन्दू धर्म से प्रेम रखने वाला व्यक्ति हिन्दुत्व पोषक इन धाराओं का अभिनन्दन किये बिना नहीं रह सकता। एक और बात जिसका इस प्रसंग में उल्लेख और समर्थन मुझे आवश्यक प्रतीत होता है वह नाबालिग बच्चों पर माता के अधिकार की स्वीकृति विषयक है। अब तक के विधान में यह ज्ञात हुआ है कि इसकी उपेक्षा की जाती थी, यद्यपि शास्त्रों के अनुसार माता का स्थान सबसे ऊंचा है। यहां तक कि मनुस्मृति अ. 2 श्लोक 145 में लिखा है कि **'उपाध्यायान् दशाचार्यः आचार्याणां शतं पिता सहस्रतु पितृन्माता, गौरवेणातिरिच्यते।'** अर्थात आचार्य का स्थान 10 उपाध्यायों से भी बढ़ कर है, पिता का गौरव 100 आचार्यों और माता का 1000 पिताओं से भी बढ़ कर है।

इस दृष्टि से इन उपर उद्धृत धाराओं और धारा 82 के इस अंश का कि 'किन्तु शर्त यह है कि इस धारा में किसी भी ऐसी बात का होना नहीं विचारा जायेगा जो किसी भी व्यक्ति के संरक्षक का कार्य पूरा करने के लिए साधिकार कर सके यदि ऐसे नाबालिग की माता जीवित है और अपने ऐसे नाबालिग बच्चे की स्वाभाविक संरक्षिका होने की क्षमता या योग्यता रखती है।' हम अभिनन्दन करते हैं।

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(हिन्दू कोड बिल पर विचार-6)

सम्पत्ति में स्त्रियों के अधिकार

(पूर्वार्ध)

पं. धर्मदेव विद्यावाचस्पति

इस लेख में मैं उन धाराओं पर कुछ विचार करना चाहता हूं जिनका सम्बन्ध 'स्त्रियों के सम्पत्ति में अधिकार' के साथ है। पुत्रियों के उस सम्पत्ति में अधिकार पर मैं अगले लेख में विचार करूंगा। ये दोनों विषय ही बड़े विवादास्पद और कठिन है। मैने स्वयं अनेक दिनों तक इन विषयों पर शास्त्रीय तथा व्यावहारिक दृष्टि से विचार किया है और मुझे यह लिखने में संकोच नहीं कि अभी तक मैं सर्वथा निश्चित परिणाम पर पहुचने में पूर्णतया समर्थ नहीं हो सका तथापि अनेक विचारों को लेखबद्ध करना मुझे उचित प्रतीत होता है ताकि विचारशील जनता तथा विद्वन्मंडली उन पर गम्भीरता से विचार कर सके।

स्त्रियों तथा विधवाओं का सम्पत्ति में अधिकार होना चाहिए या नहीं और यदि होना चाहिये तो वह सीमित हो अथवा पूर्ण जैसा कि इस बिल की धारा 91 एवं 93 में उल्लिखित है। इन धाराओं में कहा गया है :

स्त्री की सम्पत्ति के प्रकार-(1) इस कोड के अस्तित्व में सम्पूर्णतया आने के बाद किसी स्त्री द्वारा जो भी सम्पत्ति प्राप्त की जायेगी वह निश्चयात्मक वा निजी (Absolute) उसकी सम्पत्ति होगी।

अपवाद-(2) उपधारा (1) में उल्लिखित कोई बात किसी ऐसी सम्पत्ति पर लागू नहीं होगी जो कि स्त्री द्वारा बतौर दान के या किसी वसीयतनामे के अधीन प्राप्त की गई है और जहां दान एवं वसीयतनामे की शर्तें स्पष्टरूप या आनुषंगिक रूप में ऐसी सम्पत्ति के बारे में सीमित अधिकार प्रदान करती है बशर्ते कि उक्त आनुषंगिक आदेश का उद्भव उस स्त्री जाति के कारण ही नहीं होता।

व्याख्या-इस धारा में 'सम्पत्ति में स्त्री द्वारा उपलब्ध चल और अचल उभय सम्पत्तियों का समावेश होगा, फिर चाहे यह प्राप्ति उसके विवाह से पहले या बाद हुई हो अथवा वैधव्यकाल के मध्य में हुई हो और चाहे वह उत्तराधिकारी के रूप में या किसी कार्य के फलस्वरूप अस्तित्व में आई हो या बंटवारे पर अथवा किसी सम्बन्धी या अन्य व्यक्ति द्वारा किसी दान से या अपनी चातुरी या प्रयत्न से या खरीद से या बहुकालबोधक अधिकार से किसी तरीके से प्राप्त हुई हो।

धारा 93-स्त्रीधन-पत्नी की अमानत इस कोड के आरम्भ होने के बाद किसी विवाह के संस्कार सम्पूर्ण होने की अवस्था में कोई भी ऐसा स्त्रीधन (डावरी या दहेज) जो कि उस विवाह प्रसंग पर अथवा उसकी किसी शर्त के रूप में या उसके सम्बन्ध में एक उपहार के रूप में दिया गया है वह उस स्त्री की सम्पत्ति समझा जायेगा जिसका कि इस प्रकार विवाहसंस्कार सम्पन्न किया गया है।

(2) जहां ऐसी स्त्री के अतिरिक्त कि जिसका इस प्रकार विवाह संस्कार सम्पन्न किया गया है किसी अन्य व्यक्ति द्वारा कोई स्त्रीधन प्राप्त किया जाता है, तो उस अवस्था में ऐसे व्यक्ति को वह अपने पास उस स्त्री के लाभ तथा व्यक्तिगत उपयोग के लिए एक अमानत के रूप में रखना होगा तथा जब वह स्त्री अपनी आयु का 18वां वर्ष पूरा करे तब दे देना होगा और यदि वह अपनी आयु की उक्त अवधि पूरी करने से पहले ही मर जाए तो भाग 7 में निश्चित किये गये उस के उत्तराधिकारियों के नाम परिवर्तित कर देना होगा। इन धाराओं में निर्दिष्ट वस्तु गंभ्भीरता से विचार योग्य है।

सम्राज्ञी श्वशुरे भव साम्रज्ञीश्वश्र वां भव । ननान्दरि सम्राज्ञी भव सम्राज्ञी अधि देवृषु ॥

10/85/45

यथा सिन्धुनदीनां साम्राज्यं सुपुवे वृषा । एवं त्वं सम्राज्ञेधि पत्युरस्तं परेत्य।

(अथर्व. 14/1/43)

वेदों में पत्नी का स्थान बहुत उच्च माना गया है तथा उस के लिए अनेक वेद मन्त्रों में सम्राज्ञी शब्द का प्रयोग किया गया है जिस का अर्थ सम्+राज्ञी अपने गुणों से भली भांति चमकने वाली और रानी होता है।

यह मन्त्र इस विषय में विशेष रूप से द्रष्टव्य है। सम+राज्ञी का अर्थ सम्=मिलकर (पति से मिलकर) अथवा उसके साथ राज्य करने वाली यह भी होता है। इन मन्त्रों में नव वधू को सम्बोधित करते हुए घर की सम्राज्ञी बनने का आदेश व आशीर्वाद दिया गया है और अपने श्वसुर, देवर, ननद, सास आदि सब सम्बन्धियों को सद्व्यवहार से प्रसन्न करने अथवा अपने गुणों से चमकने का उपदेश दिया गया है। **'गृहान् गच्छ गृहपत्नी यथासः।'** (ऋ. 10/85/16) तथा **'अस्मिन् गृहे गार्दपत्याय जागृहि'** (ऋ. 10/85/27) इत्यादि मन्त्रों में भी स्त्री को गृह पत्नी अथवा घर की स्वामिनी बनने का उपदेश व आदेश है। **'आशसाना सौमनसं प्रजां सौभाग्यं रयिम् । पत्युरनव्रता भूत्वा संनह्यस्वामृताय कम् ॥'** अथर्व (14/1/42) **'रथा सहस्प वर्चसा, इमौ स्तामनुपक्षितौ'** (अ. 3/78/2) इत्यादि मन्त्रों में भी वधु को कहा गया है कि तुम पति से प्रेम, प्रसन्नता, सन्तान, सौभाग्य, ऐश्वर्य की कामना करती हुई उसकी अनुव्रता हो कर सुख प्राप्त करो। ये दोनों (पति-पत्नी) सब प्रकार से धन से भरपूर हों। इस प्रकार हम देखते हैं कि वेद स्त्रियों के प्रति उच्च भाव दर्शाते हुए उनका पति की सम्पत्ति तथा समस्त सुख साधनों में समान अधिकार का निर्देश करते हैं।

मध्यकालीन साहित्य में स्त्रियों की स्थिति को हम अनेक अंशों में गिरा हुआ पाते हैं। **'अनृतं स्त्री', 'निरिन्द्रिया ह्यमंत्राश्च स्त्रियोऽनृतमिति स्थितिः॥'** तथा **'विश्वासपात्रं न किमस्ति नारी'** (श्री शंकराचार्य कृत प्रश्नोत्तरी) इत्यादि वाक्य हमें उस काल की अनेक स्मृतियों तथा अन्य ग्रन्थों में दिखाई देते हैं जिनमें स्त्रियों को अविश्वसनीय, असत्यस्वरूपिणी तथा अशुभा मानकर उनको सर्वथा अस्वतन्त्र तथा शूद्र व दासी समान माना गया है, किंतु ऐसे वेद विरुद्ध वचनों को चाहे वे किसी भी मुनि के नाम पर निर्मित

ग्रंथ में पाये जाएँ, मानने से हमें सर्वथा इन्कार कर देना चाहिए क्योंकि वेद विरुद्ध होने के अतिरिक्त वे न्याय बुद्धि के भी विपरीत हैं। दु:ख की बात यह है कि ऐसे स्त्रियों के प्रति हीनता और अविश्वास सूचक भाव लोगों के हृदयों में घर किए हुए हैं और इन विषयों पर जब कभी विचार किया जाता है तो प्राय: पुरुषों के मुख से इस प्रकार के अविश्वाससूचक वाक्य ही निकलते हैं। जैसे कि मैंने इन दिनों अनेक सुशिक्षित महानुभावों से भी बातचीत करके देखा है।

स्त्रियों के सम्पत्ति में अधिकार के सम्बन्ध में शास्त्रीय दृष्टि से विचार करते हुए हमें स्त्रीधन के स्वरूप को समझ लेने की आवश्यकता है। जिस पर प्राय: सभी स्मृतिकारों ने पूर्ण अधिकार स्वीकार किया है। मनुस्मृति 9/194 में स्त्रीधन का स्वरूप इस प्रकार बताया गया है–

अध्यग्न्यध्यावाहनिकं, दत्तंच प्रीतिकर्मणि । भ्रातृमातृ पितृ प्राप्तं 'षड्विधं स्त्रिधनं स्मृतम् ॥

अर्थात विवाह के समय में अग्नि के समक्ष जो धन स्त्री को दिया जाता है, पति के गृह से जब पिता के घर स्त्री जाती है उस समय श्वशुरादि से जो प्राप्त होता है, पति द्वारा जो प्रेमोपहार रूप में दिया जाता है तथा भाई, माता और पिता द्वारा समय पर जो कुछ प्राप्त होता है, यह 6 प्रकार का स्त्रीधन माना जाता है। याज्ञवल्क्यस्मृति 2/143 में **'पितृ मातृ पति भ्रातृदत्त मध्यग्न्युपागतम् अधिवेदनिकाद्य च, स्त्रीधनं परिकीर्तितम्॥'** इस श्लोक में स्त्रीधन का स्वरूप प्राय: मनुस्मृति के समान ही बताते हुए आदि शब्द का प्रयोग किया गया है। जिसकी व्याख्या में विज्ञानेश्वर ने मिताक्षरा टीका में लिखा है कि **'आद्य शब्देन रिक्थक्रयसंविभागपरिग्रहाधिगमप्राप्तमेतन् स्त्री धनं मन्वादिभिरुक्तम्।'** (याज्ञवल्क्य स्मृति मिताक्षरा, सुबोधिनी बाल भट्टयादी टीका सहित मद्रास पृ. 842) अर्थात् आदि शब्द से दाय भाग, खरीद बंटवारा, लाभ तथा अन्य प्रकार से प्राप्त धन, ग्रहण है।

नारदस्मृति में भी **'अध्यग्न्यध्यावाहनिकं, भर्तृदायस्तथैव च ! भ्रातृदत्तं पितृभ्यांच, षडविधं स्त्रीधनं स्मृतम ॥।'** (ना. स्मृ. 13/8) इन शब्दों में मनुस्मृति के समान स्त्रीधन का स्वरूप बताया गया है। भर्तृदाय शब्द का स्पष्ट रूप से वहां प्रयोग किया गया है जिसका अर्थ पति द्वारा प्रदत्त है।

इस स्त्रीधन पर स्त्रियों का पूर्ण अधिकार प्राय: स्मृतिकारों तथा महाभारतकार ने स्वीकार किया है, महाभारत 18/1 में कहा है :

स्त्री धनस्पेशिनी स्त्री स्याद, भर्ताच तदनुज्ञया । भोक्तु 'रक्षयितु' 'योम्यो भर्तु' नाशयितु न च ॥

अर्थात स्त्रीधन की स्वामिनी स्त्री है। उसकी अनुमति से ही पति विशेष अवस्थाओं में उसका उपयोग कर सकता है अन्यथा नहीं। यहां तक कि इस विषय में लिखा है:

'न भर्ता नैवं च सुतो न पिता भ्रातरों न च । आदाने वा विसर्गे वा, स्त्रीधने प्रभविष्णव: ॥'

(दायभाग 78 स्मृति चन्द्रिका 282 पराशर माधवीय 556)

अर्थात् स्त्रीधन को लेने और उसको बेचने आदि का अधिकार पति, पुत्र, पिता, भ्राता आदि किसी को भी नहीं है।

सौदायिक धन का लक्षण शुक्रनीति 4/793 में इस प्रकार किया गया है :

ऊढया कन्यया वापि, पत्युः पितृगृहेऽपिवा। भ्रातुः सकाशात्पित्रोर्बा, लब्धं सौदायिकं स्मृतम् । (स्मृतिसार 60, स्मृति चन्द्रिका 282, पराशर माधवीय 549)

अर्थात् विवाहिता अथवा अविवाहिता कन्या पति व पिता के घर से अथवा भाई और माता-पिता के पास से जो कुछ प्राप्त करती है उसे सौदायिक कहते हैं। उस सौदायिक धन के विषय में शास्त्रकारों ने कहा है :

सौदायिकं धनं प्राप्य, स्त्रीणां स्वातंत्र्यमिष्यते। यस्मात्तदातृशंस्पार्थं, तैर्दत्तमुपजीवनम् ॥

सौदायिके सदा स्त्रीणां, स्वातंत्र्यं प्ररिकीर्तितम्! विक्रये चैव दाने च, यथेष्ट स्थावरेप्वपि॥

(शुक्रनीति 4/792-93 कात्यायनस्मृति, दायभाग 76, स्मृति चन्द्रिका 282, पराशर माधवीय 549)

अर्थात्, सौदायिक धन में स्त्रियों को सदा पूर्ण स्वतन्त्रता है। उसको बेचने और दान करने का और स्थावर सम्पत्ति-भूमि आदि के विषय में भी यथेष्ट व इच्छानुसार कार्य करने का उन्हें पूर्ण अधिकार है।

●●

(हिन्दू कोड बिल पर कुछ विचार–7)

सम्पत्ति में स्त्रियों के अधिकार

(उत्तरार्ध)

पं. धर्मदेव विद्यावाचस्पति

प्रस्तुत हिन्दू कोड बिल में स्त्रियों के सम्पत्ति विषयक अधिकार के विषय में इस लेख के पूर्वार्ध में उद्धृत धाराओं में जो कुछ कहा गया है वह इन श्लोकों में दिए भाव के सर्वथा अनुकूल है अतः इन प्रस्तावों को शास्त्रविरुद्ध बताना सर्वथा असत्य प्रमाणित होता है। किन्तु इस विषय में स्मृतिकारों का भी परस्पर मतभेद अवश्य है, विशेषतः इस विषय में कि विधवाओं का पति की चल और अचल सम्पत्ति में अधिकार सीमित होना चाहिए अथवा पूर्ण। उदाहरणार्थ नारद स्मृति में लिखा है:

भर्त्रा प्रीतेन यद्दत्तं, स्त्रियै तस्मिन् मृतेऽपितत्।

सा यथा काममश्नीयाद् दद्याद्वा स्थावराद्दते ॥

(नारद स्मृति–व्यवहार मयूख पृ. 97 में उद्धृत वचन)

अर्थात पति ने पत्नी को प्रेमपूर्वक जो कुछ दिया हो उसके मरने पर वह उस धन का इच्छानुसार उपयोग करे अथवा उसे दान दे किन्तु स्थावर या अचल सम्पत्ति के विषय में उसे यह अधिकार प्राप्त नहीं है।

एक दूसरे स्थान पर भी 2/144 में नारद ने यही बात कही है:

अपुत्रा शयनं भर्तुः पालयन्ती गुरौ स्थिता।

भुंजीतामरणात्क्षान्ता दायादा ऊर्ध्वमाप्नुयुः ॥

अर्थात पुत्र रहिता पवित्रचरण वाली विधवा क्षमाशीला होकर मरणपर्यंत पति की सम्पत्ति का उपभोग करे। उसके पश्चात वह सम्पत्ति उसके उत्तराधिकारियों को मिले।

महाभारत अनुशासन पर्व 47/23–24 में लिखा है :–

त्रिसहस्रपरोदायः, स्त्रियै देयो धनस्य वै।

भर्त्रा तच्च धनं दत्तं यथार्ह भोक्तुमर्हति ।

स्त्रीणां च पतिदायाद्यम्, उपभोगफलं स्मृतम् ॥

अर्थात् पति को चाहिये कि वह पत्नी को 3000 से अधिक कार्षापण (एक सिक्का जिसका ठीक परिणाम हमें अभी तक ज्ञात नहीं हो सका) दायरूप में दे दे और वह पति के दिये उस धन का यथोचित रूप से उपभोग कर सकती है। पति का दिया धन व सम्पत्ति उपभोग फल अर्थात जीवितकाल तक उपयोग के लिये ही है।

यही बात कौटलीय अर्थशास्त्रकार ने–

'अपुत्रा पतिशयनं पालयन्ती गुरूसमीपे स्त्रीधनम् आ आयुः क्षयाद् भुञ्जीत । अपदर्थं हि स्त्रीधनम् । उर्ध्वं दायादं गच्छेत् ॥ कौ. 3/2 में कही है।

इसमें भी विधवा को आयुपर्यन्त पति की सम्पत्ति के भोग का अधिकार दिया गया है। इसके पश्चात् वह उसके उत्तराधिकारियों को मिले । याज्ञवल्क्य स्मृति 2/16 की मिताक्षरा टीका में विज्ञानेश्वर का पुत्र रहित पति की सम्पत्ति पर पूर्णाधिकार–

'तस्मादपुत्रस्य स्वर्यातस्यासंसृष्टिनी धनं परिणीता स्त्री संयता सकलमेव गृहाति।'

इन शब्दों द्वारा प्रकट किया है। अर्थात पुत्ररहित, सम्मिलित कुटुम्ब से विभक्त पति की संयमशीला साध्वी पत्नी सारा धन संग्रह करती है।

इस प्रकार स्मृतिकारों तथा निबन्धकारों का परस्पर मतभेद इस विषय में स्पष्ट है। अत: व्यावहारिक दृष्टि से भी इस पर विचार आवश्यक है।

जो लोग हिन्दू कोड बिल में वर्णित धाराओं के विरोधी हैं उनमें से अधिकतर लोगों का यह कहना है कि स्त्रियां सम्पत्ति का प्रबन्ध करने में असमर्थ होती हैं अत: उनको पूर्णाधिकार देना ठीक न होगा। इस से न केवल उनको, प्रत्युत उन के कुल को भी हानि होगी। वस्तुत: यह बात अनुभव के आधार पर सत्य नहीं प्रमाणित होती। बम्बई में जहां कन्याओं को पिता की सम्पत्ति में पूर्णाधिकार प्राप्त है, कहा जाता है कि, उन्होंने सम्पत्ति के प्रबन्ध में पुरुषों से भी अधिक योग्यता का प्राय: परिचय दिया है। एक बात प्रस्ताव के विरुद्ध यह कही जाती है कि स्त्रियों में केवल 3 प्रतिशत शिक्षिता हैं, शेष 97 प्रतिशत अशिक्षित हैं। अत: इस प्रकार का अधिकार देना उनके लिए अत्यन्त हानिकारक सिद्ध होगा। यह युक्ति कुछ अंश तक ठीक प्रतीत होती है, किंतु इसके अनुसार पुरुषों में से भी केवल 10 प्रतिशत के लगभग शिक्षित और शेष अशिक्षित हैं अत: उन 90 प्रतिशत लोगों को भी वह अधिकार न देना चाहिए । हिन्दू विश्व विद्यालय काशी के एक सुयोग्य उपाध्याय डॉ. अनंत सदाशिव अलतेकर ने अपनी पुस्तक (The position of women in Hindu civilisation) में यह सुझाव रक्खा है कि स्त्रियों को सम्पत्ति पर पूर्णाधिकार देने के लिए शिक्षा का मानदण्ड नियत कर देना चाहिए। उस शिक्षा योग्यता से सम्पन्न महिलाएं ही उस अधिकार का उपयोग कर सकें, अन्य नहीं। यह प्रस्ताव मुझे भी उपादय प्रतीत होता है इससे यह अवश्य होगा कि जो युक्ति अशिक्षिता होने के कारण स्त्रियों के ठगे जाने की दी जाती है वह निर्बल हो जाएगी। किन्तु उस अवस्था में क्या पुरुषों के अधिकार पर भी ऐसा प्रतिबन्ध लगाना न्यायसंगत न होगा?

एक भय यह प्रकट किया जाता है कि यदि विधवाओं को पति की चल, अचल दोनों प्रकार की सम्पत्ति में पूर्णाधिकार दिया जाएगा तो इसका दुरुपयोग होने की संभावना बहुत अधिक है। अत: एक प्रस्ताव यह किया जाता है। जैसे कि श्री चांदकरण शारदा जी ने हिंदू ला कमेटी के सामने साक्षी देते हुए किया था, कि चल सम्पत्ति में स्त्रियों को पूर्णाधिकार दिया जाय किन्तु अचल सम्पत्ति में अधिकार जिससे वह उस परिवार में ही रहे। यह प्रस्ताव भी मुझे उत्तम और स्वीकरणीय प्रतीत होता है यद्यपि उपर्युक्त संभावना इससे सर्वथा दूर हो जाएगी ऐसा नहीं कहा जा सकता। एक प्रस्ताव यह भी है कि जहां सन्तान तथा अन्य उत्तराधिकारी न हों वहीं विधवाओं को पति की सम्पत्ति पर पूर्णाधिकार दिया जाए अन्यथा नहीं। मुझे तो इसकी अपेक्षा भी पूर्वोद्धृत प्रस्ताव ही

कि पति की चल सम्पत्ति में शिक्षित विधवाओं का पूर्णाधिकार हो वर्तमान परिस्थिति को दृष्टि में रखते हुए अधिक उपयुक्त प्रतीत होता है। आजकल जब कि नैतिक मर्यादा शिथिल हो रही है और धूर्त वंचकों का जाल सर्वत्र फैला हुआ प्रतीत होता है, क्या यह अच्छा न होगा कि इस विषय में अधिक सावधानी से काम लिया जाए? कुछ घरों तक उपर्युक्त प्रस्ताव के अनुसार बने कानून का परिणाम देखने के पश्चात् इस में आवश्यक परिवर्तन किया जा सकता है। इस विषय में अत्यधिक शीघ्रता की अवश्यकता नहीं। आशा है विचारशील समाजहितैषी इस विषय पर गम्भीरता से विचार करेंगे।

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(हिन्दू कोड बिल पर कुछ विचार-8)

स्त्रियों के दायभागाधिकार

पं. धर्मदेव विद्यावाचस्पति

स्त्रियों के सम्पत्ति में अधिकार विषयक धाराओं पर शास्त्रीय तथा व्यावहारिक दृष्टि से कुछ विचार करने के पश्चात अब मैं हिन्दू कोड बिल की धारा 100 में उस अंश पर कुछ विचार करना चाहता हूं जिसमें किसी वसीयतहीन मृत व्यक्ति की सम्पत्ति के बंटवारे के सम्बन्ध में नियम बतलाते हुए यह कहा गया कि 'प्रत्येक पुत्री का हिस्सा पुत्र के हिस्से के बराबर होगा' ।

निस्सन्देह यह अत्यधिक विवादास्पद धारा है जिसके विरुद्ध आंदोलन भी सबसे अधिक किया जा रहा है । यहां तक कहा जा रहा है कि यह सब मुसलमानी प्रथा है जिसे हिंदुओं पर लादने का यत्न हो रहा है । इस गम्भीर विषय पर पहले मैं शास्त्रीय दृष्टी से कुछ विचार विद्धानों के समक्ष रखना चाहता हूं । इसके पश्चात् व्यावहारिक दृष्टी से भी इस पर विचार किया जायेगा । जिस रूप में यह धारा प्रस्तुत कोड बिल में रखी गई है कि 'प्रत्येक पुत्री का हिस्सा पुत्र के बराबर होगा' मैं उस रूप के पक्ष में नहीं हूं । तथापि यह आवश्यक है कि इन कन्याओं के पैतृक सम्पत्ति में अधिकार की प्रथा का मुसलमानी, सर्वथा अशास्त्रीय तथा धर्मविरुद्ध प्रथा कहने से पूर्व, हम इस पर निष्पक्ष होकर विचार करें और इसमें परिवर्तनार्थ उचित संशोधन प्रस्तुत करें ।

पुत्रियों का पैतृक सम्पत्ति में अधिकार होना चाहिए या नहीं, यदि हां तो किनका और कितना इस पर हमें शास्त्रीय दृष्टि से पृथक् विचार करना उचित होगा । सबसे पूर्व मैं अविवाहित तथा विवाह न कराने वाली पुत्रियों के सम्बन्ध में विचार प्रस्तुत करूंगा । उसके पश्चात् पिता की एकमात्र पुत्री के सम्बन्ध में और अन्त में विवाहिता पुत्रियों के सम्बन्ध में ।

ऋग्वेद 2/17/7 में निम्न मंत्र आया है :

''अमाजूरिव पित्रोः सचा सती समानादा सदसस्त्वामिये भगम् । कृधि प्रकेतमुपमास्याभर तद् मे भागं तन्वो येन मामहः ॥ इस मन्त्र का श्री सायनाचार्य आदि सब भाष्यकारों ने इस प्रकार भाष्य किया है–

हे इन्द्र अमाजू :–**यावज्जीवं गृह एव जीर्यन्ती पित्रोः सचा-माता-पितृभ्यां सह भवन्ती तयोः शुश्रूषणपरा पतिमलभमानः सती दुहिता (समानात्) आत्मनः पित्रोश्च साधारणात् (सदसः) गृहात्।**

गृह उपस्यामव यथा भागं याचति तथा स्तोताहं भगं भजनीयं धनं स्वामिये, त्वां याचे ॥"

इस का तात्पर्य यह है जिस प्रकार जीवनपर्यन्त माता-पिता के घर में भी रह कर अपने भाग को माता-पिता से मांगती है वैसे ही मैं स्तोता तुझ इन्द्र (परमेश्वर) से सेवनीय ऐश्वर्य की प्रार्थना करता हूं । 'धर्मकोष' के सम्पादक पं. लक्ष्मण शास्त्री जोशी तर्कतीर्थ ने इस वेद मन्त्र को व्यवहार काण्ड उत्तरार्द्ध पृ. 1415 में उद्धृत करते हुए उसका शीर्षक यह दिया है, 'अनूढ दुहिता पैत्र्यभागहारिणी पुत्री पैतृक संपत्ति में भाग ग्रहण करने की अधिकारिणी होती है ।'

इस विषय में सम्भवतः किसी भी विचारशील व्यक्ति का मतभेद न होगा कि जो किसी भी विशेष उद्देश्य से सुलभा, गार्गी आदि, की तरह नैतिक ब्रह्मचर्य का व्रत धारण करें अथवा अन्य किसी कारण से विवाह न करें उनको पैतृक संपत्ति में से भाग मिलना चाहिए।

सुप्रसिद्ध निरुक्त के प्रणेता श्री यास्काचार्य ने निम्नलिखित वेद मन्त्र पुत्रियों के दाय भाग के सम्बन्ध में उद्धृत किया है–

"शासद्वन्हिंर्दुहितुर्नर्त्यगाद् विद्वां ऋतस्य दीधितिं सपर्यन् ।

पिता यत्र दुहितुः सेकमृंजन्, संशग्म्येन मनसादधन्वे ॥"

(ऋ. 3/31/1)

इस मन्त्र को उद्धृत करने से पूर्व श्री यास्काचार्य ने लिखा है :

"अथैता दुहितृ दायाद उदाहरन्ति पुत्रदायाद इत्येके।"

इसके भाष्य में दुर्गाचार्य ने लिखा है :

"एनां ऋचं शासद् वह्निः इत्यादी या वक्ष्यमाणा ता दुहितुर्दायादे अर्थ उदाहरन्ति धर्मविंदः। अस्याम् ऋचि वक्षयमाणायां दुहितुरपि दायाद्यत्वमस्तीति दृश्यते ।"

अर्थात् शासद् वह्निः इस ऋचा को जानने वाले पुत्री को दाय भाग का अधिकार है, एस अर्थ में उद्धृत करते हैं । इस ऋचा से ज्ञात होता है कि पुत्री को भी दाय भाग का अधिकार है।

इस मन्त्र का भाष्य करते हुए श्री यास्काचार्य ने लिखा है :

विद्वान ऋतस्य दिमितिं सपर्यन् विधानं पूजयन् अर्थात् वेद के विधान का आदर करता हुआ । वह वेद का विधान क्या है इसका यास्काचार्य जी ने आगे इस प्रकार प्रतिपादन किया है जो प्रस्तुत विषय की दृष्टि से अत्यन्त महत्त्वपूर्ण है :

अविशेषेण मिथुनाः पुत्रा दायादा इति । तंदेतदृक् श्लोकाभ्यामभिहितम् अङ्गवङ्गात् संभवसि हृदयादधि जायसे । आत्मा वै पुत्रनामासि स जीव शरदः शतम् ॥ इति ॥ अविशेषेण पुत्राण ां दायो भवति धर्मतः 1 मिथुनानां विसर्गादौ मनुःस्वायम्भुवोऽब्रवीत ॥

अर्थात पुत्र और पुत्री दोनों को दायभाग का अधिकार है जैसे कि निम्नलिखित ऋचा में और श्लोक में बताया गया है, जिनका अर्थ यह है कि पुत्र को सम्बोधित करते हुए जो यह कहा जाता है कि तू अङ्ग-अङ्ग और हृदय से उत्पन्न होता है अतः मेरी आत्मा के तुल्य है तू सौ वर्षों तक जी, यह पुत्र पुत्री दोनों पर समान रूप से लगता है, यह वचन शत पथ ब्राह्मण 14/9/4/6, साम ब्राह्मण 1/5/17 वृहदारण्यकोषनिषद् 6/4/26, कौषीतकी ब्राह्मणोपनिषद् 2/11, पारस्कर गृह्यसूत्र 1/16/18, हिरण्यकेशी गृह्यसूत्र 2/3/2 इत्यादि में पाया जाता है । इसी के समान निम्न वचन मनुस्मृति 9/130 में है–

यथैवात्मा तथा पुत्रः, पुत्रेण दुहिता समा । तस्यामात्मनि तिष्ठन्त्यां कथमन्यों धनं हरेत् ॥

अर्थात् पुत्र अपनी आत्मा के समान होता है पुत्री पुत्र के समान होती है । उस आत्मातुल्य पुत्री के होते हुए अन्य कैसे धन ले सकता है ?

महाभारत अनुशासन पर्व 45/11 में मनुस्मृति का उपर्युक्त श्लोक ही उद्धृत किया गया है । दूसरा श्लोक जो निरुक्तकार यास्कमुनि ने स्वायम्भुव मनु के विषय में उद्धृत किया है उसका अर्थ यह है कि स्वायम्भुव मनु ने अविशेष या सामान्य रूप से पुत्र और पुत्री दोनों का धर्मानुसार दाय भाग में अधिकार होता है ऐसा सृष्टि के प्रारम्भ में बताया । स्वायम्भुव मनु का ऐसा मत वेद के आधार पर ही होना चाहिए इसलिए निरुक्तकार ने **'शासद वह्निर्दुहितुः'** इस मन्त्र को उद्धृत किया है ।

निरुक्तकार का मत स्पष्टतया लड़कियों के दाय भाग के अधिकार के पक्ष में ज्ञात होता है यद्यपि 'न दुहितर इत्येके' यह लिख कर उन्होंने दूसरा पक्ष उन लोगों का रखा है जो यह कहते हैं कि लड़कियों का दाय भाग में अधिकार नहीं है । यह लिखने की आवश्यकता कि **"स्त्रियाः दानविक्रयातिसर्गा विद्यन्ते न पुंसः"** अर्थात स्त्रियों का दान किया जाता है, उन्हें बेचा जाता है और उनका इच्छानुसार त्याग कर दिया जाता है अथवा **"तस्मात् स्त्रियं जातां परास्यन्ति न पुमांसम्"** अर्थात् स्त्री (कन्या) के उत्पन्न होने पर उसे फेंक दिया जाता है पुरुष (बालक) को नहीं, ऐसी लचर युक्तियां देकर जो यह सिद्धांत बनाते हैं कि **"तस्मात् पुमान् दायादः अदा यादा स्त्रीति विज्ञायते ।"** अर्थात पुरुष को ही दाय भाग का अधिकार है स्त्री को नहीं, उसकी अपेक्षा हमें निरुक्तकार यास्काचार्य का अपना मत अधिक उपादेय प्रतीत होता है । **'शासद् वह्निर्दुर्हित कम करें:'** यह ऋ. 3/31 का प्रथम मन्त्र जब पुत्री के दाय भाग के अधिकार का समर्थन है तो उसी सूक्त के दूसरे मन्त्र **'न तान्वो जामये'** का ठीक विरुद्ध अर्थ खींचातानी से लगाना हमें संगत प्रतीत नहीं होता । उसमें बहुत अधिक खैंचातानी दाय भाग विरोधियों को करना पड़ता है । 'मातर:' का अर्थ माता-पिता 'वह्नि' का अर्थ पुरुष करके उसके साथ जबरदस्ती अवन्हि जोड कर स्त्री, एक शुभ कर्म का कर्त्ता अर्थात् पिण्ड देने वाला पुरुष और दूसरी केवल अलंकृत होने वाली स्त्री इत्यादि अर्थ कल्पित करने पड़ते हैं । निरुक्तकार ने अपना पक्ष पहले दिखा कर इस पक्ष का निर्देश मात्र कर दिया है । महर्षि दयानन्द जी ने इसकी व्याख्या अग्नि, विद्या तथा सन्तान रक्षादि के सम्बन्ध में की है, जिसका भगिनी को भाग न देने से कोई सम्बन्ध नहीं । वेद में इस प्रकार एक ही सूक्त में परस्पर विरुद्ध दो आदेश हैं, यह कौन वेद प्रेमी स्वीकार कर सकता है ? सायणाचार्य आदि भाष्यकार क्योंकि पौराणिक विचारों के थे अत: उन्होंने स्पष्ट लिख दिया कि **पिण्डदानादिकर्तृत्वात् पुत्रोदायार्हः दुहिता तथा नेति न दायार्हा' [3/31/2 सायण भाष्य]** अर्थात् पुत्र क्योंकि मृत पितरों को पिण्ड देता है इसलिए वह दाय भाग का अधिकारी है परन्तु पुत्री पिण्ड नहीं देती इसलिए उसको दाय भाग का अधिकार नहीं । ऐसी ही बात प्राय: सभी पौराणिक भाष्यकारों ने लिखी है । कइयों ने स्त्रियों के प्रति अत्यन्त तुच्छ भाव प्रकट करते हुए उनका दाय भाग में अनधिकार माना है । जैसे कि सरस्वती विलासकार ने 363 पृ. में लिखा है, **"स्त्रीयां दाय विभागो नास्ति निरिन्द्रियत्वात्"** अर्थात स्त्रियों का दाय विभाग में अधिकार इसलिए नहीं क्योंकि वे इन्द्रियशून्या होती हैं ।

पण्डित सदायतन पाण्डेय प्रधान संयुक्त प्रांतीय धर्मसंघ ने राव कमेटी के सम्मुख साक्षी देते हुए पुत्रियों के दाय भाग मे विरुद्ध यही युक्ति दी । लड़की को जो पिता के श्राद्ध तथा पिण्ड-दान आदि में कोई भाग नहीं लेती लड़के के साथ जिसको इन कर्तव्यों का पालन करना होता है दाय भाग में अधिकार देना सर्वथा अनुचित होगा (देखो हिन्दू ला

कमेटी रिपोर्ट पृ. 130) महामहोपाध्याय चिन्नस्वामी शास्त्री आदि ने इलाहाबाद में अखिल भारतीय सनातन धर्म महासभा की ओर से साक्षी देते हुए यही कहा कि लड़कियों को, जो अपने पिता का श्राद्ध नहीं करती पैतृक सम्पत्ति में कोई भाग न मिलना चाहिए । (रावकमेटी रिपोर्ट पृ. 129) इस प्रकार की निस्सार युक्तियां जो पौराणिक विचारों पर आश्रित हैं कहां तक ठीक हैं यह विचार-शील सज्जन स्वयं निर्णय करें ।

पं. लक्ष्मण शास्त्री जोशी तर्कतीर्थ ने बहिन के भाई के साथ दायादि में भाग लेने के विषय में निम्न वेदमन्त्र को धर्मकोष, व्यवहार काण्ड, उत्तरार्द्ध के पृ. 1415 में उद्धत किया है :

"एष ते रुद्र भागः सह स्वस्त्राम्बिकया तं जुपस्व ।" (शुक्ल यजुर्वेद 3/57 कण्ब संहिता 7/6, मैत्रायणी संहिता 1/10/4, तैत्तिरीय संहिता 18/6/1, शतपथ ब्राह्मण 2/6/2/9)

यहां भी बहिन के भाई के साथ दायादि में भाग का स्पष्ट निर्देश है।

"अभ्रातेव पुंस एति प्रतीची गर्तारुगिव सनये धनानाम् ।" इस मंत्र में जिसकी निरुक्त 3/4 में व्याख्या की गई है अभ्रातृका कन्या का पैतृक सम्पत्ति को प्राप्त करने का स्पष्ट निर्देश है जिसका प्रायः सब स्मृतियों में भी समर्थन किया गया है जैसे कि अगले लेख में उद्धृत स्मृत्यादि वचनों से पाठकों को ज्ञात हो जायेगा ।

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(हिन्दू कोड बिल पर कुछ विचार-9)

स्त्रियों का दायभाग और स्मृतियां

पं. धर्मदेव विद्यावाचस्पति

अब मैं इस सम्बन्ध में प्राप्त होने वाले स्मृत्यादि ग्रन्थों के वचनों को विद्वानों के सम्मुख रखना चाहता हूं ।

मनुस्मृति 9/118 में निम्न श्लोक पाया जाता है :

स्वेभ्योंशेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक् । स्वात्स्वादंशाच्चतुर्भागं, पतितः स्युरदित्सवः ॥

(मनु. 9/118)

अर्थात भाइयों को चाहिए कि अपने अपने हिस्से में से चतुर्थ भाग वे पृथक् भाग वे पृथक् 2 कन्याओं अर्थात् अपनी अविवाहित भगिनियों को दें । जो न देना चाहें वे पतित समझे जाएं ।

इस वचन में कन्याओं का लड़कों से चतुर्थ भाग लेने को अधिकार स्पष्ट तथा प्रतिपादित है।

याज्ञवल्क्य स्मृति 2/12 में भी यही बात

असंस्कृतास्तु संस्कार्या भ्रातृभिः पूर्णसंस्कृतैः । भगिन्यश्च निजावंशाददृत्वांशं तु तुरीयकम् ॥

इस श्लोक द्वारा कही गई है । इस श्लोक की मिताक्षरा टीका में विज्ञानेश ने लिखा है कि **'अनेक दूहितरोपि पितुरुर्ध्वमंशभागिन्य इति गम्यते ।** अर्थात् इससे ज्ञात होता है कि पिता की मृत्यु के पश्चात् पुत्रियों का भी दाय भाग में अधिकार है । इसी टीका में आगे लिखा है कि **"नच निजादंशाद् तुरीयकम् इति तुरीयांशविवक्षया संस्कार मात्रोपयोगि द्रव्यं दत्वेति व्याख्यान युक्तम् । मनुवचन विरोधात् । तस्नात् पितुरुर्ध्वं कन्याप्यंशभागिनी पूर्व चेद्यत् किंचित् पिता ददाति तदेव लभते विशेषवचनाभावादितिसर्वमनवद्यम् ।"**

(मिताक्षरा टीका).

अर्थात् यहां भगिनी को चौथा हिस्सा देने का जो विधान है उसका यह अर्थ न समझा जाए कि संस्कार के उपयोगी द्रव्य से ही यहां प्रयोजन है, चतुर्थ भाग देने से नहीं क्योंकि ऐसा मानने से मनुस्मृति (9/118) के वचन से विरोध हो जाएगा । इस लिए यह स्पष्ट है कि पिता की मृत्यु के बाद कन्या का भी उसकी सम्पत्ति में अधिकार है । जीवित काल में तो पिता कन्या को जो कुछ देता है वह उसे प्राप्त करती है । विश्वेश्वर भट्टप्रणीत मदन पारिजात नामक सुप्रसिद्ध निबन्ध ग्रन्थ में याज्ञवल्क्य स्मृति के इस श्लोक की व्याख्या करते हुए स्पष्ट लिखा है कि **"भगिन्यश्च इत्यादेस्यं तात्पर्यार्थः। भगिनीनामसंस्कृतानां विवाहं कृत्वा ताभ्यश्चतुर्थमंशं दद्यात् ।"** (मदन पारिजात 648) अर्थात् 'भगिन्यश्च' इत्यादि याज्ञवल्क्य वचन का तात्पर्य यह है कि अविवाहिता भगिनियों का विवाह संस्कार करा कर फिर उनको अपने भाग का चौथा हिस्सा दे ।

जो लोग यह मानते हैं कि भगिनी को चतुर्थ अंश केवल विवाह-संस्कारार्थ दिया जाता है, इस मत का खण्डन करते हुए मदनपारिजात में आगे लिखा है कि **"केचन एवं मन्यन्ते, पूर्वोक्तरीत्या चतुर्थमंश कन्यकायै दत्वा तेनैव विवाहः कर्तव्यो न तु समुदित द्रव्येण विवाहं कृत्वा पुनरपि चतुर्थांशदानमिति तन्मेधातिथिमिताक्षराकारादीनामनभिमतत्वादुपेक्षणीयम् ।"** (मदन पारिजात 650) अर्थात् कई ऐसा मानते हैं कि पूर्वोक्त प्रकार कन्यों को अपना चौथा

हिस्सा देकर उसी से उनका विवाह करना चाहिए न कि एकत्रित व संयुक्त द्रव्य से विवाह करके फिर उनको चौथा हिस्सा देना चाहिए । यह मत मेधातिथि, मिताक्षराकार विज्ञानेश्वर इत्यादि के विरुद्ध होने के कारण उपेक्षा करने योग्य है । व्यवहार काण्ड (देखो धर्मकोष पृ. 1420).

बालम्भट्टी नामक याज्ञवल्क्य स्मृति की टीका में भी यही बात कही गई है कि **"केचिदुक्तरी-त्यैव तुरीयमंशं कन्यायै दत्वा तेनैव विवाहः कार्यो न तु समुदितद्रव्येण विवाहोंऽशदानं च पृथगित्याहुः। तन्मतं खण्डयति । न चेति एतेन देशाचाराद् व्यवस्थेतिमद नपारिजातायुक्तमपास्तम् ।" (बालम्भट्टी--धर्मकोष पृ. 1421)** अर्थात् जो यह कहते हैं कि कन्या को उक्तरीति से चौथा भाग देकर उसी से विवाह करना चाहिए न कि संयुक्त द्रव्य से विवाह संस्कार करा कर चौथा भाग पृथक् देना चाहिए उनके मत का 'नच' इत्यादि के द्वारा मिताक्षराकार ने खण्डन किया है । मदन पारिजात ने अन्त में जो यह लिख दिया था कि 'अथवा देशाचार से इसकी व्यवस्था हो जायेगी उसका भी इससे खण्डन हो जाता है ।

इस विषय को कुछ विस्तार में लिखने की आवश्यकता इसलिए हुई कि प्रायः पौराणिक पण्डित मनुस्मृति और याज्ञवल्क्य स्मृति में स्पष्ट प्रतिपादित चतुर्थ भाग देने का तात्पर्य केवल विवाह संस्कारार्थ बताकर टालमटोल का यत्न करते हैं उसकी निस्सारता और अयथार्थता विद्वानों को ज्ञात हो जाये । अब इस सम्बन्ध में अन्य स्मृत्यादि वचनों को देखिए ।

(7) नारद संहिता 14/13 में लिखा है :–

ज्येष्ठायांशोऽधिको ज्ञेयः, कनिष्ठायावरः स्मृतः । समांशभागः शेषाः स्युः, अप्रत्ता भगिनी तथा ॥ अर्थात् ज्येष्ठ भ्राता को कुछ अंश अधिक देना चाहिए, सबसे छोटे को कम। शेष भाईयों और अविवाहिता बहिन को बराबर बांटना चाहिए।

यहां अविवाहिता बहिन को पैतृक सम्पत्ति में से मध्य वाले भाइयों के बराबर भाग देने का विधान है ।

(8) कात्यायन स्मृति में निम्न श्लोक है : **"कन्यकानां स्वदत्तानां; चतुर्थो भाग इष्यते । पुत्राणा च त्रयोभागाः, साम्यं स्वल्पधने स्मृतम् ॥"** (देखो दाय भाग 69, स्मृति चन्द्रिका 268) अर्थात् अविवाहिता कन्याओं का पैतृक सम्पत्ति में चौथा भाग रहता है शेष पुत्रों का 3/4 । जब वह धन थोड़ा हो तो कन्याओं का भी पुत्रों के समान धन पर अधिकार रहता है ।

(9) बृहस्पति स्मृति में इस विषय में लिखा है कि **'तदभावे तु जननी, तनयांशसमांशिनी । समांशा मातरस्तेषां, तुरीयांशा च कन्यका ॥'** (दाय भाग 69 स्मृतिसार 57 वीर मित्रोदय 2/117 धर्मकोष पृ. 1413) अर्थात पिता के मरने पर उसकी पत्नी का भाग अपने लड़कों के बराबर और कन्या का चौथा होना चाहिए ।

(10) विष्णुस्मृति 18/34, 35 में लिखा है : **'मातःपुत्र भागानुसारेण भागहारिण्यः अनूदाश्च दुहितरः॥"** (दाय भाग 68, सरस्वती विलास 357) अर्थात् माता का भाग पुत्रों के अनुसार होता है और अविवाहिता पुत्रियों का भी एक अन्य स्थान पर जिसे सरस्वती विलास पृ. 361 और धर्मकोष, व्यवहार कांड, उत्तरार्द्ध पृ. 1416 में उद्धत किया गया है। विष्णु ने कहा है कि **'अनूढानामप्रतिष्ठितानामेवांशो दातव्यः।'** अर्थात जो पुत्रियां अविवाहिता हों अथवा निर्धना व विधवा हों उन्हें पैतृक सम्पत्ति में से हिस्सा देना चाहिए।

(11) वृद्धहारीत स्मृति 7/256 में लिखा है : **भगिन्यश्च तुरीयांशं, पैतृकादाहदेद् धनम् । न स्त्रीधनं तु दायाद्वा विभजेरयुनापदि ॥** अर्थात् पैतृक धन से बहिनों को अपना चौथा भाग दे । सम्बन्धी बिना विशेष आपत्ति के स्त्री धन का बंटवार न करें ।

(12) देवल स्मृति में निम्न वचन पाया जाता था जिसे दाय भाग 175, स्मृति चन्द्रिका, 268, स्मृतिसार 59 आदि में उद्धत किया गया है :

कन्याभ्यश्च पितृद्रव्यश्च देयं वैवाहिकं वसु ॥ इसका अर्थ स्मृतिचन्द्रिकाकार ने यह किया है कि विवाहप्रयोजकं धनं कन्याभ्यः पितृद्रव्याद् देयम् ॥ अर्थात् कन्याओं को विवाह के लिए धन पैतृक सम्पत्ति में से देना चाहिए । किंतु व्यवहार प्रकाशकार ने इस अर्थ का खण्डन करते हुए लिखा है कि 'स्मृतिचन्द्रिकाकारस्तु कन्याभ्यश्चेति देववचनपनुसारेण संस्कार मात्रोपयोगि द्रव्यदानमेव मन्यते अत्र वदामः कन्याभ्यः पितृ द्रव्यदेयमिति पृथग् विधिः। तच्च मन्वाद्यनुरोधाच्चतुर्थांशरुपमेव । वैवाहिकवसुः च देयं इत्यपि पृथग् विधिः 'विभज्यमाने दायाद्ये कन्यालङ्कार वैवाहिकं च स्त्रीधनं लभेत्' इति शङ्खवचनसमानार्थतयां । व्याख्यातं चेदं शङ्खवचनं विद्यारण्यश्री चरणैः पराशर स्मृति टीकायाम्–पैतृकद्रव्यविभाग काले स्वघृतमलङ्का रादिकमपि कन्याप्राप्नोतीत्याह शङ्ख इति । यदि तु वैवाहिकं विवाहोपयोगि पितृव्यं कन्याभ्यों देयमित्यर्थः स्याद् वसुपदं पुनरुक्तं स्यादिति पृथग् विधिद्वयमेवात्र युक्तम् । तस्मादस्मदुक्तमेव व्याख्यानमादर्तुमहं नतु विवाहोपयुक्त द्रव्य परतेत्यवसेयम् ॥

(व्यवहार प्रकाश 456/457, धर्मकोष पृ. 1422) अर्थात् स्मृति चन्द्रिकाकार ने इस वचन का यह जो अर्थ किया है कि कन्याओं को केवल विवाहोपयोगी द्रव्य पिता की सम्पत्ति में से देना चाहिए यह ठीक नहीं है । यहां दो विधान हैं। एक तो यह कि कन्याओं को पैतृक धन देना चाहिए जो मनुस्मृति आदि के अनुसार चौथा हिस्सा है । दूसरी विधि यह है कि कन्याओं को विवाहोपयोगी द्रव्य देने चाहिए जैसे कि शङ्ख स्मृति में भी बताया गया है अन्यथा वसुपद व्यर्थ और पुनरुक्त होता। इसलिए हमारा अर्थ ही मानने योग्य है कि कन्याओं को पिता की सम्पत्ति में से हिस्सा (जो पुत्र का चौथा भाग हो) देना चाहिए और विवाहोपयोगी द्रव्य देने चाहिए।

(13) पैठानसि स्मृति में कहा कि **'कन्या वैवाहिकं स्त्रीधनं च लभते ।'** (व्यवहारनिर्ण य तथा व्यवहारार्थ समुच्चय 129 से धर्मकोष पृ. 1422 में उद्धृत)

अर्थात् कन्या विवाहोपयोगी द्रव्य और धन के अतिरिक्त माता के स्त्रीधन को प्राप्त करे ।

(14) स्मृत्यन्तर से निम्न वचन स्मृतिचन्द्रिका 268 और व्यवहारार्थ समुच्चय 129 में उद्धृत किया गया है :–

भ्रातृभ्योंऽशं, चतुर्थांशं तत्र कन्या हरेद्धनम् ॥ अर्थात् कन्या प्रत्येक भाई के हिस्से के चौथे भाग को पैतृक सम्पत्ति में से प्राप्त करे ।

(15) कौटलीय अर्थशास्त्र 3/5 में कहा है कि,

रिक्थं पुत्रवतः पुत्रा दुहितरो वा धर्मिष्ठेषु विवाहेतु जाताः ॥

अर्थात् सन्तान वाले पिता के धन को उत्तम विवाहविधि से उत्पन्न पुत्र और पुत्रियां प्राप्त करें।

(16) शुक्राचार्य ने अपनी स्मृति में जिसे शुक्रनीति के नाम से कहा जाता है बताया है कि **समानभागा वै कार्याः, पुत्राः स्वस्य च वै स्त्रियः । स्वाभागार्धहरा कन्या, दौहित्रस्तु तदर्थभाक् ॥**

(शुक्रनीति 4, 5, 299)

अर्थात् पिता की सम्पत्ति में से पुत्रों और स्त्रियों को समान 2 भाग मिलना चाहिए । कन्याओं को पुत्रों के भाग का आधा और घेषते को उसका भी आधा । इसी प्रकार अन्य भी बहुत से वचन स्मृतियों तथा अन्य ग्रन्थों में कन्याओं के दाय भाग में अधिकार के पाए जाते हैं किन्तु उनमें कन्या का भाग प्रायः पुत्र को चौथा हिस्सा माना गया है । इन वचनों से यह तो स्पष्ट है कि वह कन्याओं को पैतृक सम्पत्ति में से भाग देने की प्रथा धर्मविरुद्ध या मुसलमानी नहीं है । इस विषय पर अन्य दृष्टियों से विचार मैं अगले लेख में करूंगा ।

●●

(हिन्दू कोड बिल पर कुछ विचार–10)

पुत्रियों के दायभागाधिकार पर विमर्श

(पूर्वार्ध)

पं. धर्मदेव विद्यावाचस्पति

पुत्रियों के पैतृक धन में दायभागाधिकार के सम्बन्ध में 16 प्रमाणों द्वारा विवेचन पूर्व लेखों में किया जा चुका है । अन्य भी अनेक प्रमाण इस विषय में उपलब्ध होते हैं किन्तु विस्तार भय से उन सबका उल्लेख करना यहां सम्भव नहीं है । शङ्ख लिखित स्मृति का निम्न वचन इस विषय में अवश्य उल्लेखनीय है जिसका कुछ निर्देश एक उद्धरण में किया जा चुका है:–

(17) **"विभज्यमाने दायाद्ये कन्यालङ्कारं वैवाहिकं, स्त्रीधनं च कन्या लभेत ।"**

इस का अर्थ यह है कि जब दायभागादि का विभाग किया जाय तो कन्या भूषण, विवाहोपयोगी द्रव्य तथा स्त्रीधन को प्राप्त करे । स्मृतिचन्द्रिका 269/270 में इस वाक्य की व्याख्या में लिखा है, **"मातृनिर्विभाज्यमाने कन्या स्वघृतमलङ्कारं, वैवाहिकं तुरीयांशादिधनं स्त्रीधनं च, पित्रादिदत्तं लभेतेति ।"** यहां पुत्र के चतुर्थ भाग लेने का भी स्मृतिचन्द्रिकाकार ने उल्लेख कर दिया है ।

पिता की सम्पत्ति में चतुर्थ भाग लेने के अतिरिक्त मातृधन पर भी पुत्रियों के अधिकार का बहुत सी स्मृतियों तथा महाभारतादि में प्रतिपादन है । उदाहरणार्थ विष्णुस्मृति से निम्न वचन श्री प्रतापरुद्रदेव रचित सरस्वती विलास में उद्धत किया गया है **यौतुकं मातुः कुमारी दाय एव ।** (सरस्वती विलास पृ. 382)।

अर्थात् माता के द्रव्य पर (**यौतुकं अन्योन्यान्वितमोवधूर्वरयोर्देयं यत् तद्ध नम्**) कुमारियों का अधिकार होता है ।

(18) मनुस्मृति 9/192 में मातृधन विभाग के विषय में कहा है:

"जनन्यां संस्थितायां तु समं सर्वे सहोदराः । भजेरन् मातृकम् रिक्थम् भगिन्यश्च सनाभयः ॥"

अर्थात् माता के मरने पर उसके धन को भाई और बहिनें बांट लें।

(19) बृहस्पति स्मृति में इस विषय में लिखा है–

"स्त्रीधनं तदपत्त्यानां, दुहिता च तदंशिनी ।
अप्रत्ता चेत्समूढा, तु, लभते मानमात्रकम् ॥"
"या तस्य भगिनी सातु, ततोंऽशं लब्धुमर्हति ।
अनपत्यस्य धर्माऽयम् अभार्यपितृकस्य च ॥" 26/108
"सा च दत्ता स्वदत्ता वा, सोदरे तु मृते सति ।
तस्यांशं तु, हरेत्सैव, द्वयोर्व्यक्तं हि कारणम् ॥" 26/109
"सोदर्या विभजेरस्ते, समेत्य सहिताः समम् ।
भ्रातरो ये च संसृष्टाः, भगिन्यश्च सनाभयः ॥" 26/114

इन श्लोकों में कहा गया है कि स्त्रीधन उस मृत स्त्री के पुत्रों का होता है और पुत्री का भी उसमें भाग होता है यदि वह अविवाहित हो । विवाहिता उस में से मान व प्रतिष्ठार्थ द्रव्य प्राप्त कर सकती है । यदि किसी का भाई मर जाए तो उसकी बहिन को भी उसके धन में से भाग मिलना चाहिए । चाहे वह पुत्रिकारूप में दी हुई हो या न हो, भाई के मरने पर उस का भाग उस बहिन को मिलना चाहिए क्योंकि दोनों के जन्म का मूल एक ही है । संसृष्ट व मिली हुई पैतृक सम्पत्ति को भाई-बहिन मिल कर बांट लें।

याज्ञवल्क्य स्मृति 2/117 व्यवहाराध्याय में लिखा है:– **"मातृर्दुहितरः शेषम्, ऋण ताभ्य ऋतेऽन्वयः"। इस की मिताक्षरा व्याख्या में विज्ञानेश्वर ने लिखा है—मातृकृत्तम् ऋणं पुत्रैरेवापकरणीयं न दुद्वितृभिः ऋणावरिष्टं तु दुहितरो गृहणीयुरिति । युक्तं चैतत् पुमान् पु सोधिके वीर्ये, स्त्रीभवत्यधिके स्त्रियाः इति स्त्रयवयवानां दुहितृषु वाहुल्यात स्त्रीधनं दुहितृगामि पितृधनं पुत्रगामि पित्रवयवानां पुत्रेषु बाहुल्यादिति । तत्रच गौतमेन विशेषो दर्शितः ।**

"स्त्रीधन दुहितृणाम् अप्रतिष्ठितानां अप्रतिष्ठानां च" गौतम धर्मसूत्र 28/25 ।।

अर्थात् माता पर कोई ऋण हो तो उसको चुकाना पुत्रों का कर्त्तव्य है पुत्रियों का नहीं । ऋण को चुका कर जो धन बचे उसको पुत्रियां ले ले । मनु के वचनानुसार लड़कियों मे माता के अवयव का अधिक भाग होने के कारण स्त्रीधन पर लड़कियों का और पिता के धन पर पुत्रों का अधिक अधिकार होता है । इस विषय में गौतम ने इस प्रकार विशेष दर्शाया है कि 'स्त्रीधन अविवाहिता और अप्रतिष्ठिता अथवा निर्धना लड़कियों का होता है ।'

(21) जहां तक अभ्रातृका का संबंध है, महाभारत अनुशासन पर्व 88/22 में कहा है **'अभ्रातृका समग्रार्हा, चार्धार्हेत्वपरे विदुः॥**

अर्थात् जिसके भाई न हो ऐसी पुत्री का पिता की सारी सम्पत्ति पर अधिकार होता है ऐसा अनेक आचार्यों का मत है । किसी किसी का मत यह है कि उसका आधी सम्पत्ति पर अधिकार है ।

(22) नारद स्मृति 16/50 में ऐसी अभ्रातृका के विषय में कहा है ।

'पुत्राभावे तु दुहिता, तुल्यसन्तानकारणात् ।

पुत्रश्च हुहिता चोभौ, पितुः सन्तानकारकौ ॥

(नारदीय मनुसंहिता 14/47)

अर्थात् पुत्र के अभाव में पुत्री को पैतृक सम्पत्ति मे पूरा अधिकार होता है कि वह भी पिता की पुत्र के समान ही सन्तान है ।

(23) महाभारत अनुशासनपर्व 45/12 में लिखा है, **'मातुश्च यौतुके यत्स्यात् कुमारीभाग एव सः ॥'**

अर्थात् माता के धन पर कुमारी का अधिकार होता है ।।

(24) बृहस्पति स्मृति 26/132 में कहा है– **'सदृशी सदृशेनोढा, शूश्रषणे रता । कृताऽकृता वा पुत्रस्य, पितुर्धनहरी तु सा ॥'**

अर्थात् जो पुत्री पिता के समान गुणकर्म स्वभाव वाली अपने समान योग्य पति से ब्याही गई हो, साध्वी पतिव्रता हो वह पिता के दाय भाग में अधिकारिणी होती है चाहे उसे पुत्र के रूप में माना गया हो या नहीं । इन वचनों पर निष्पक्ष दृष्टि से विचार करने पर हम इन परिणामों पर पहुंचते है–(1) जो कन्याएं आजीवन ब्रह्मचर्य का गार्गी सुलभा आदि की तरह अनुष्ठान करके सामाजिक व राष्ट्रीय सेवा मे अपने को समर्पित कर दे उनका पिता की सम्पत्ति में पुत्रों के समान अधिकार होता है और उन्हें अपने निर्वाहार्थ पुत्र के समान भाग मिलना चाहिए । यदि यह अविवाहित रहना किसी शारीरिक दोषादि के कारण हो तो भी पिता की सम्पत्ति से ऐसी पुत्रियों को भाग मिलना चाहिए ।

(2) पिता की एकमात्र सन्तान पुत्री का पिता की सम्पत्ति पर अपनी माता के होते हुए उसके बराबर अन्यथा पूरा अधिकार है ।

(3) अविवाहिता कन्याओं को पिता की सम्पत्ति में भाइयों के भाग का चौथाई अंश मिलना चाहिए ऐसा मनु, याज्ञवल्क्य, नारद, देवल, बृहस्पति, कात्यायन, विष्णु वृद्धहारीत आदि प्रायः सभी स्मृतिकारों ने माना है । शुक्राचार्य कन्याओं को पुत्रों का आधा भाग पैतृक सम्पत्ति मे देने के पक्षपाती हैं।

(4) विवाहिता पुत्रियों की भी पिता की सम्पत्ति में अधिकार हो इसका समर्थन करने वाले केवल तीन वचन मेरी दृष्टि में आये हैं । इनमें भी सब विवाहिता पुत्रियों को नहीं केवल अप्रतिष्ठिता अर्थात् निर्धना विवाहिता पुत्रियों को पिता की सम्पत्ति में से पुत्रों का चौथा भाग देने के विधान है । ये वचन विष्णुस्मृति, गौतमधर्मसूत्र और बृहस्पति स्मृति के हैं जिनको मैंने इससे पूर्व लेख में उद्धृत किया है । विष्णु का वचन जो पिछले लेख में छपा है इस प्रकार है:– **'अनूढानां अप्रतिष्ठितां एवांशो दातव्यः'** अर्थात अविवाहित और निर्धना पुत्रियों को ही पैतृक सम्पत्ति में से भाग मिलना चाहिए । सुप्रसिद्ध सनातनधर्माभिनामी दाक्षिणात्य विद्वान महामहोपाध्याय पं. अनन्तकृष्ण शास्त्री ने हिंदू ला कमेटी के सामने साक्षी देते हुए कहा था कि याज्ञवल्क्यस्मृति की मेरी व्याख्या के अनुसार एक पुत्री, चाहे वह विवाहिता हो अथवा अविवाहिता, पैतृक सम्पत्ति में से चौथे भाग की, जो विवाह विषयक खर्च के अतिरिक्त हो, अधिकारिणी है । (देखो हिंदू ला कमेटी रिपोर्ट 1947 पृ. 32).

इन सब बातों को ध्यान में रखते हुए मेरा विचार यह है कि अविवाहित कन्याओं को पुत्र के भाग का एक चौथाई पैतृक सम्पत्ति में से देना सर्वथा शास्त्रसम्मत और उचित है । उनके अतिरिक्त निर्धना विवाहिता पुत्रियों को भी पैतृक सम्पत्ति में से भाग लेने का शास्त्रानुसार अधिकार है, यद्यपि इसके निश्चय करने में व्यावहारिक कठिनाइयां अवश्य हैं ।

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(हिन्दू कोड बिल पर कुछ विचार–11)

पुत्रियों के दायभागाधिकार पर विमर्श

(उत्तरार्ध)

पं. धर्मदेव विद्यावाचस्पति

प्रस्तुत हिन्दू कोड बिल में वसीयतहीन मृत पिता की लड़कियों को लड़कों के बराबर देने का जो प्रस्ताव है उससे मैं सहमत नहीं हूं क्योंकि यदि लड़कियों को पिता की सम्पत्ति में से पुत्रों के समान भाग मिले, पति की सम्पत्ति में भी विवाहिता पत्नी का अधिकार हो, माता के स्त्रीधन में से अधिक भाग उसका हो तो वह न्याय संगत बात प्रतीत नहीं होती । सब कमेटी ने लड़कियों को बिना वसीयत मृत पिता की सम्पत्ति में पुत्रों से आधा भाग देने का प्रस्ताव किया था किन्तु प्रवर समिति (सेलेक्ट कमेटी) के अनेक सदस्यों से प्रतीत होता है कि विरोध की प्रतिक्रिया के रूप में उसे लड़कों के बराबर देने का विचार प्रकट कर दिया जिसे हम बुद्धिमत्तापूर्ण व न्यायसम्मत नहीं कह सकते। वस्तुतः ऐसा करके उन्होंने हिन्दू कोड बिल के विरुद्ध आंदोलन को अनजाने प्रबल बनाने में सहायता दी। यदि वे इस लेखमाला में उद्धृत शास्त्रीय वचनों को दृष्टि में रखते हुए और मद्रास हाईकोर्ट मे भू. पू. सुयोग्य जज सर वेपा रामेशम् जैसे सुधार प्रेमी महानुभावों के वचनानुसार लड़कियों के पिता की सम्पत्ति में से लड़कों का चौथा भाग देने का प्रस्ताव भी रखते तो इस बिल का इतना विरोध न होता यह मुझे निश्चय है। अतः मेरा अब भी इस बिल के प्रस्तावक महोदय से सानुरोध निवेदन है कि वे लड़कियों को वसीयत हीन मृत पिता की सम्पत्ति में लड़कों के चौथे भाग देने का संशोधन स्वीकार कर लें। कोई निष्पक्ष व्यक्ति शास्त्रीय दृष्टि से भी इसका विरोध करने का साहस न करेगा और व्यावहारिका दृष्टि से भी विचार करने वालों को वह अधिक न्याय संगत प्रतीत होगा।

इस प्रस्ताव के विरोध में यह कहा जाता है कि लड़कियों का पैतृक सम्पत्ति में भाग होने से भाई बहिनों के झगड़े बढ़ जायेंगे और उनमें परस्पर प्रेम नही रहेगा । यह युक्ति कुछ भी प्रबल नहीं । इस युक्ति के अनुसार तो भाइयों में भी परस्पर विभाजन नहीं होना चाहिए। संसार की प्रायः सभी जातियों में लड़कियों को पिता की सम्पत्ति में भाग मिलता है उससे उनके अन्दर प्रेम नहीं रहता अथवा झगड़े बढ़ जाते हैं ऐसा नहीं कहा जा सकता। गोआ में भी एक ही सिविल कोड हिन्दुओं, इसाइयों, मुसलमानों सब पर लागू है जिसके अनुसार लड़कियों को लड़कों की तरह पैतृक सम्पत्ति में भाग मिलता है किन्तु जांच करने पर पता लगा है कि भाई बहिनों के झगड़ों के उदाहरण वहां नहीं के बराबर हैं । भाई बहिनों का प्रेम इसलिए न रहे कि बहिन को भी मृत पिता की सम्पत्ति में कुछ भाग (जो हमारे शास्त्रसम्मत और न्याय संगत प्रस्तावानुसार भाई के भाग का चौथाई) मिलता है तो ऐसे प्रेम को तो केवल स्वार्थमूलक ही कहना चाहिए। कलकत्ता हाईकोर्ट के एडवोकेट श्री. ए. सी. गुप्त और मद्रास के सर पी. एस. शिवस्वामी ऐय्यर ने हिन्दू ला कमेटी की सामने साक्षी देते हुए इस युक्ति के खण्डन में ठीक ही कहा था कि भाई

का वह कैसा प्रेम होगा जो अपने स्वार्थ या भाग की थोड़ी सी हानि से टूट जायेगा। हम इस बात को स्वीकार नहीं कर सकते कि जब बहिन को कोई भाग न दिया जाय तब प्रेम अधिक होगा अन्यथा नहीं।

इस पर भी यदि किन्हीं महानुभावों को यह आशंका हो तो उन्हें अपनी वसीयत में यह लिखा देने का अधिकार है कि हमारी पुत्रियों को सम्पत्ति में कोई भाग न दिया जाए। वह प्रस्ताव केवल वसीयत किए बिना मृत व्यक्ति की सम्पत्ति के विषय में है कि उसकी लड़की को भी भाग मिले, अन्यों के विषय में नहीं। इस बात को प्रायः लोग नहीं जानते अथवा भूल जाते हैं। अपनी वसीयत में कुछ भी निर्देश लिखने का प्रत्येक को अधिकार है, जिसका लड़कियों को पैतृक सम्पत्ति में भाग देने के विरोधी अच्छी प्रकार उपयोग कर सकते हैं ।

यह आक्षेप किया जाता है और उसमें कुछ तथ्य है कि यदि लड़कियों को पैतृक सम्पत्ति विशेषतः चल सम्पत्ति में अधिकार दिया जायेगा तो उससे बड़ी गड़बड़ हो जाएगी। विवाह के पश्चात् लड़कियां सम्पत्ति को कहां और कैसे ले जाएंगी। इसका उत्तर यह दिया जा सकता है कि भाई बहिनों की सम्पत्ति को खरीद लें। सबसे प्रथम अधिकार उन्हें ही दिया जाए। यही विचार श्रीयुत कन्हैया लाल जी मुंशी आदि कई सुप्रसिद्ध महानुभावों ने प्रकट किया था। एक दूसरा संशोधन इस विषय में यह प्रस्तुत किया जाता है जो हमें उचित ही प्रतीत होता है कि लड़कियों को संयुक्त परिवार की सम्पत्ति में रहने और उसके उपयोग का अधिकार हो किन्तु उसे अन्यों को बेचने अथवा उसके किसी भाग को किराये पर देने का अधिकार न होना चाहिए।

इस संशोधन को यदि स्वीकार कर लिया जाय तो उपर्युक्त आक्षेप का बहुत कुछ समाधान हो जाता है ।

क्योंकि लड़कियां मृत पितरों के लिए पिण्ड नहीं देतीं अतः उनका पिता की सम्पत्ति में कोई भाग न होना चाहिए यह युक्ति जो मदुरा के राव साहब नरेश ऐय्यर, महामहोपाध्याय चिन्न स्वामी शास्त्री तथा अन्य बहुत से पौराणिक पंडितों ने प्रस्तुत की इतनी निस्कार है कि इस विषय में कुछ भी लिखना अनावश्यक है । विवाह पर जो आडम्बरपूर्ण व्यर्थ व्यय आज कल किए जाते हैं, जिनसे सिवाय अपनी प्रतिष्ठा दिखाने के कोई लाभ नहीं होता प्रत्युत हजारों परिवार सदा के लिए ऋण से दब जाते हैं, उनको कम करके लड़कियों की शिक्षा तथा आपत्ति के समय सहायतार्थ पैतृक सम्पत्ति में से भाग दिलाया जाये तो वह सर्वथा उचित ही होगा । दहेज इत्यादि की हानिकारक और आडम्बरपूर्ण प्रथाएं भी इससे बहुत न्यून हो जायेंगी और लड़कियों को आपत्ति के समय वास्तविक लाभ हो सकेगा। आशा है इन पंक्तियों पर विचारशील लोग गम्भीरता से विचार करेंगे।

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(हिन्दू कोड बिल पर कुछ विचार–12)

संयुक्त परिवार प्रथा

पं. धर्मदेव विद्यावाचस्पति

प्रस्तुत हिन्दू कोड बिल में जिन धाराओं के विरुद्ध घोर असन्तोष प्रकट किया जा रहा है उन में से निम्न धाराएं भी विशेष रूप से उल्लेखनीय हैं।

धारा 86 परिवार में जन्म सम्पत्ति पर अधिकार स्थापित नहीं करता । इस कोड के आरम्भ होने पर तथा उसके बाद, पूर्वज के जीवन काल के दरम्यान उसकी सम्पत्ति में हित रखने का दावा करने का अधिकार जो कि केवल इस तथ्य पर निर्धारित है कि दावेदार का जन्म उक्त पूर्वज के परिवार में हुआ था किसी भी अदालत में स्वीकृत नहीं होगा।

(87) संयुक्त आसामी का स्थान सम्मिलित आसामी के रूप में बदल जाएगा:–

प्रस्तुत कोड के आरम्भ पर तथा उसके बाद कोई भी अदालत, संयुक्त परिवार की सम्पत्ति में हित रखने के किसी ऐसे अधिकार को मान्य नहीं करेगी जो कि उत्तराधिकार के नियम पर अवलम्बित हैं और समस्त व्यक्ति जिनके जिस दिन यह कोड कार्यान्वित हो जाएगा उस दिन कोई संयुक्त परिवार की सम्पत्ति है वह उक्त सम्पत्ति बतौर सम्मिलित आसामियों के (टेनेन्ट्स इन कामन) Tenants in common अपने पास रखते हैं ऐसा विचारा जायेगा। मानो कि कोड के आरम्भ की तिथि पर ऐसी सम्पत्ति के विषय में संयुक्त परिवार के समस्त सदस्यों के बीच बंटवारा हो गया था और उनमें से प्रत्येक व्यक्ति अपना भाग एकपरिपूर्ण स्वामी के रूप में अपने पास अलग रखते हैं । इत्यादि :–

(88) हिन्दू पत्र के धार्मिक कर्तव्य का (पायस आब्लिगेशन) pious obligation का नियम खंडित किया जाता है (1) इस कोड के आरम्भ मे पश्चात् कोई भी अदालत सिवाय उसके जैसा कि उपधारा 2 में विनिहित किया गया है, किसी पुत्र, पौत्र, पौत्र के विरुद्ध, उसके पिता, पितामह, और प्रपितामह द्वारा लिये गये ऋण की वसूली के लिये और ऐसे किसी ऋण की अदायगी के सम्बन्ध में किसी सम्पत्ति को अधिकार में लेने के लिए इस आधार पर कि ऐसे किसी ऋण को चुका देगा उक्त पुत्र, पौत्र अथवा प्रपौत्र का धार्मिक कर्त्तव्य है, कानूनी कार्यवाही करने के अधिकार को स्वीकृत नहीं करेगी।

(2) इस कोड के प्रयोग में आने से पहिले यदि कोई ऋण लिया गया है तो उस हालत में उपधारा 1 में उल्लिखित कोई भी बात निम्नांकितों पर प्रभाव नहीं डालेगी।

(अ) किसी भी लेनदार का पुत्र, पौत्र, और प्रपौत्र जैसे कि सूरत हो, के विरुद्ध कानूनी कार्यवाही दायर करने का अधिकार या ऐसे किसी देन की वसूली के सम्बन्ध में किया गया किसी सम्पत्ति का स्वत्वार्पण या इन्तकाल (Alienation) और ऐसा कोई अधिकार या स्वत्वार्पण धार्मिक कर्त्तव्य के नियम के अधीन उसी प्रकार और उसी सीमा तक प्रयोग में लाया जायेगा जैसा कि यह कोड पास न होने की अवस्था में किया जाता।

89–संयुक्त परिवार के सदस्यों की कोड के पहिले की ऋण विषयक जिम्मेदारयों में परिवर्तन नहीं होगा-जहां इस कोड के आरम्भ से पहिले संयुक्त परिवार के नियामक एवं कर्ता द्वारा परिवार के प्रयोजनार्थ कोई कर्जा लिया गया हो तो उस अवस्था में इस कोड में उल्लिखित कोई भी बात संयुक्त परिवार की किसी भी सदस्य की उक्त ऋण चुका देने की जिम्मेदारी पर लागू नहीं होती और ऐसी कोई जिम्मेदारी ऐसे समस्त या किन्हीं भी व्यक्तियों पर जो उसके लिए उत्तरदायी हैं इसी प्रकार और इसी सीमा तक आएद की जायेगी जैसी वह कोड पास न होने की सूरत में की जाती । इत्यादि।

सबसे बड़ी आपत्ति जो इस धाराओं के सम्बन्ध में उठाई जाती है इनके द्वारा संयुक्त परिवार प्रथा का, जो कि अनादि काल से चली आ रही एक धार्मिक प्रथा है, अंत हो जाएगा। हिन्दू कोड बिल पर जो वाद-विवाद पिछले दिनों भारतीय राष्ट्रसंसद में होता रहा है उसको 4 दिन सुनने का अवसर मुझको भी प्राप्त हुआ। मुझे यह देखकर सचमुच आश्चर्य हुआ कि इसके सबसे कट्टर विरोधी एक और प्रकार से कोड विरोधी दल के प्रमुख नेता मौलाना नसीरुद्दीन अहमद हैं । जिन्होंने पग-पग पर इसकी प्रगति में रोड़े अटकाने का सिर तोड़ यत्न किया और श्रोताओं के नितान्त अरुचि प्रकट करने पर भी 7 घण्टों का भाषण कोड के विरुद्ध दिया। एक कट्टर मुस्लिमलीगी सज्जन के साथ पं. लक्ष्मीकांत मैत्रेय जैसे कट्टर पंथी सनातन धर्माभिमानी का यह गठबंधन सदस्यों और दर्शकों को अवश्य आश्चर्यचकित करने वाला प्रतीत होता है। यदि सचमुच मौलाना नसीरुद्दीन अहमद का हिंदूधर्म, हिंदू सभ्यता तथा प्रथाओं पर इतना विश्वास हो गया है कि वे इनके गुण गाते नहीं थकते तो क्यों नहीं वे इसको ग्रहण कर लेते? 2 अप्रैल के भाषण में मौ. नसीरुद्दीन अहमद ने तलाक के विरुद्ध और संयुक्त परिवार प्रथा के समर्थन में बहुत कुछ कहा। ऐसा ही पं. लक्ष्मीकांत और अजमेर के पं. मुकुट बिहारीलाल भार्गव ने भी कहा। संयुक्त परिवार प्रथा का प्रायः लोप ही होता जा रहा है। वर्तमान नियमों के अनुसार परिवार का कोई भी सदस्य साधारण पत्रादि द्वारा प्रार्थना करके भी उसके पृथक् हो सकता है । भारतीय न्यायालयों और प्रिवीकौंसिल के निर्णय संयुक्त परिवार के सदस्यों के इस अधिकार का स्वीकृत करने के पक्ष में हैं। पुराने और नये विचार वाले लोगों के रहन-सहन आचार-विचारादि में भेद इतना बढ़ गया है तथा अन्य भी अनेक ऐसी परिस्थितियां उत्पन्न हो गई हैं जिनमें संयुक्त परिवार प्रथा स्वयमेव नष्टप्राय हो चुकी है और प्रतिदिन होती जा रही है किन्तु मैं उनके नियम में लिखने की कोई आवश्यकता नहीं समझता। मैं तो इस बात पर शास्त्रों की दृष्टि से कुछ प्रकाश डालना चाहता हूं जिनके नाम की दुहाई हमारे पौराणिक भाई और मौ. नसीरुद्दीन अहमद जैसे उनके वकील देते हैं। पाठक महानुभाव स्मृतियों के निम्न वचनों पर गम्भीरता से निष्पक्ष होकर विचार करें।

(1) मनुस्मृति 9/111 में लिखा है:–

एवं सह वसेयुर्वा, पृथग् वा धर्म काम्यया।

पृथग् विवर्धते धर्मः तस्माद धर्म्मा पृथक क्रिया ॥

अर्थात् इस प्रकार भाई साथ रहें अथवा अलग अलग रहें यह उनकी इच्छा पर निर्भर है। पर अलग-अलग रहने से धर्म की वृद्धि होती है इसलिए अलग-अलग रहकर कर्म करना धर्म-सम्मत है। इसकी व्याख्या में कुल्लूक भट्ट ने लिखा है कि **"एवम् अविभक्ता भ्रातरः सह वसेयुः यदि वा धर्मकामनया कृतविभागाः पृथग् वसेयुः यस्मात् पृथगवस्थाने सति पृथग-पृथग महायज्ञाद्यनुष्ठानधर्मस्तेषां विवर्धते तस्माद विभागक्रिया धर्मार्था।"** अर्थात् इस प्रकार भाई अविभक्त रह कर साथ रहें अथवा

धर्म की कामना से विभाग (बंटवारा) करके अलग-अलग रहें, क्योंकि अलग-अलग रहने पर पंचमहायज्ञों का अनुष्ठान अलग-अलग होने से धर्म बढ़ता है। इसलिए विभाग किया अर्थात् बंटवारा करके अलग-अलग क्रिया करना धर्म के अनुकूल है ।

मेधातिथि ने भी इस श्लोक की ऐसी ही व्याख्या करके यहां तक लिखा है कि **"यस्तु जीवत्पेध पितरि कृतविवाहस्तदैव परिगृहीताग्निस्तस्यांधिकृततत्वान्नैवा—विभागः नहि विभागाधि भागयोर्धर्माधमंत्वं स्वरुपेणास्तीतयुक्तम्॥"**

(मनुस्मृति, मेधातिथिभाष्य, 2य भाग, कलकत्ता संस्करण पृ. 273)

अर्थात् जो पिता के जीवित होते हुए विवाह कर लेता है और तब गृह्याग्नि का ग्रहण करता है उसका संयुक्त परिवार से विभाग (पृथक् हो जाना) अनिवार्य या अत्यावश्यक है। परिवार के सदस्यों के विभाग होने या न होने में कोई धर्म या अधर्म नहीं है, यह हम बता चुके हैं।

(2) बृहस्पति स्मृति में इस विषय में कहा गया है :–

एकपाकेन वसतां, पितृदेवार्चनादियम् । एकं भवोद्विभक्तानां, तदेवस्याद् गृहे गृहे॥

(बृहस्पति स्मृति 26/5 पृ. 96 बड़ौदा संस्करण)

अर्थात भाई इत्यादि यदि इकट्ठे रहें और एक स्थान पर भोजन खाएं तो पितृयज्ञ, देवयज्ञादि एक ही हो सकता है किन्तु यदि वे विभक्त हो अलग-अलग रहें तो ये यज्ञ प्रत्येक घर में होते हैं इसलिए विभक्त होकर रहना ही अधिक अच्छा है।

(3) गौतम धर्म सूत्र 284 में भी इसी बात को लेके छोटे से सूत्र द्वारा प्रकट किया गया है जो निम्नलिखित है:–

'विभागे तु धर्मवृद्धिः–

अर्थात् संयुक्त परिवार की अपेक्षा उससे विभक्त हो जाने पर धर्म की वृद्धि होती है।

इसी प्रकार के वचन अन्य भी ग्रन्थों में उपलब्ध होते हैं कितु इतने ही उन लोगों के वचन को आयथार्थ सिद्ध करने के लिए पर्याप्त हैं। जो संयुक्त परिवार की प्रथा को प्राचीन आर्य हिन्दू धर्म और संस्कृति का अनिवार्य या अत्यावश्यक अंग मान कर उसके भंग को अधर्म्य समझते हैं। वास्तव में धर्म की दृष्टि से बात इससे ठीक विपरीत है । हां, यह तो आवश्यक धर्म है कि सबका परस्पर प्रेम और पूर्ण सहानुभूति हो, किसी प्रकार का विरोध भाव न हो। अथर्ववेद 3/30 में ऐसा ही आदेश है।

सहृदयं सांमनस्यमविद्वेषं कृणोमिवः। अन्यो अन्यमभिहर्यत वत्सजार्तामिवाध्या ॥

अर्थात् मैं तुम्हारे अंदर हृदय और मन की एकता और अद्वेष भाव को स्थापित करता हूं। तुम आपस में ऐसा प्रेम रखो जैसा गाय नवजात बछड़े के प्रति रखती है।

व्यावहारिक दृष्टि से संयुक्त परिवार प्रथा के पक्ष-विपक्ष में बहुत कुछ लिखा जा सकता है, किंतु मैं उस विषय में लिखना यहां आवश्यक नहीं समझता। वैयक्तिक शक्तियों का विकास, स्वावलम्बनादि गुणों की वृद्धि रहने में अधिक हो सकती है ऐसा लोगों का प्रायः अनुभव है। सम्बन्धियों तथा अन्यों के प्रति दया और सहानुभूति प्रदर्शित करना तो प्रत्येक गृहस्थ का कर्तव्य है ही। धार्मिक दृष्टि से इतना निर्देश ही पर्याप्त है।

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(हिन्दू कोड बिल पर कुछ विचार-13)

हिन्दू कोड बिल की आवश्यकता

पं. धर्मदेव विद्यावाचस्पति

गत लेख में मैंने संयुक्त परिवार प्रथा के सम्बन्ध में धार्मिक दृष्टि से कुछ प्रकाश डाला था। जन्मजात अधिकार की सम्पत्ति के विषय में विशेष लिखने की आवश्यकता मैंने नहीं समझी । हम वैदिकधर्मी तो जन्मसिद्ध अधिकार किसी विषय में भी नहीं मानते, **"अज्येष्ठासो अकनिष्ठास एते स भ्रातरो वावृधुः सौभगाय । युवा पिता स्वपा रुद्र एषां सुदुधा वृश्निः सुदिना मरुद्भ्यः ॥"** (ऋग्वेद 5/625)

इत्यादि मन्त्रों में मनुष्यमात्र की भ्रातृता तथा समानता का तात्त्विक दृष्टि से प्रतिपादन करते हुए जन्मसिद्ध अधिकार का निराकरण किया गया है । बोद्ध, जैन, सिक्ख आदि मतानुयायी भी समानता के सिद्धान्त को स्वीकार करते हैं जिससे जन्मसिद्धधिकार का समर्थन नहीं होता। महर्षि दयानन्द तो यहां तक बढ़ गए हैं कि उन्होंने केवल गुण-कर्म-स्वभाव पर आश्रित वर्णव्यवस्था के सिद्धान्त का प्रतिपादन करते हुए सत्यार्थप्रकाश में स्पष्ट लिखा है कि :-

"न किसी की सेवा का भंग और न वंशच्छेदन होगा क्योंकि उनको अपने लड़के लड़कियों के बदले स्ववर्ण के योग्य दूसरे सन्तान विद्यासभा और राजसभा की व्यवस्था से मिलेंगे इसलिए कुछ भी अव्यवस्था न होगी ।" मिताक्षरा और दायभाग के अन्तर के विस्तार में जाना इस लेख में संभव नहीं किन्तु इस विषय में पटना के एक विद्वान रिटायर्ड सबजज ने हिन्दू ला कमेटी के सम्मुख साक्षी देते हुए एक अत्यन्त महत्त्वपूर्ण और युक्तिसंगत बात अपने अनुभव के आधार पर कही जिसका उल्लेख मुझे यहां उचित प्रतीत होता है । उन्होंने कहा कि "मिताक्षरा की अपेक्षा दायभाग अधिक उपयुक्त है । मैं संयुक्त परिवार प्रथा, पुत्र के जन्मजन्य अधिकारादि को समाप्त करने के पक्ष में हूं । मैं देखता हूँ कि बिहार में धनी परिवारों के बालक आलसी होते हैं क्योंकि सम्पत्ति में जन्मसिद्ध अधिकार प्राप्त है जब कि बंगाल मे जहां दायभाग के अनुसार नियम प्रचलित है, बालक कर्मशील और साहसी होते हैं क्योंकि उन्हें धनी परिवार में जन्म लेने के ही कारण कोई अधिकार प्राप्त नहीं होता ।"

(देखो हिन्दू ला कमेटी पृ. 154)

पिता, पितामह के ऋण की नैतिक उत्तरदायिता से पुत्र, पौत्रादि को मुक्त करने की बात जो पूर्वोद्धृत धारा 88 में कही गई है युक्तियुक्त तथा न्यायसंगत प्रतीत होती है।

जहां तक सर्वसामान्य हिन्दू कोड बिल की आवश्यकता व उपयोगिता का प्रश्न है, मेरा विश्वास है कि किसी भी संगठन प्रेमी समाजहितैषि का इस विषय में मतभेद होना असम्भवप्राय है। अब अधिकतर स्थानीय व प्रांतीय रूढ़ियों व रीतिरिवाजों के विधान (कानून) का स्थान

ले रक्खा है । **'रूढिः शास्त्राद् बलीयसी:'** इस हानिकारिका और संगठन तथा एकता में बाधिका उक्ति ने कि रूढ़ि शास्त्र से भी अधिक प्रवल होती है, हिन्दु समाज को जीर्णशीर्ण बना दिया है । कानून का निश्चय करने में भी इसके कारण बड़ी कठिनाई होती है, और न्यायालयों के परस्पर विरुद्ध निर्णय के कारण धन और शक्ति का बड़ा अपव्यय होता है अत: एक सर्वसामान्य हिन्दू कोड का होना प्रत्येक दृष्टि से वांछनीय है । महर्षि दयानन्द ने स्वराज्य के महत्व को "कोई कितना ही करे परन्तु जो स्वदेशी राज्य होता है वह सर्वोपरि उत्तम होता है, अथवा मतमतान्तर के आग्रह रहित, अपने पराये का पक्षपात शून्य, प्रजा पर माता-पिता के समान कृपा, न्याय और अन्याय के साथ विदेशियों का राज्य भी पूर्ण सुखदायक नहीं है।" इन शब्दों में दिखाते हुए लिखा "परन्तु भिन्न-भिन्न भाषा, शिक्षा, अलग-अलग व्यवहार का विरोध छूटना अति दुष्कर है । बिना इसके छूटे परस्पर का पूरा उपकार और अभिप्राय सिद्ध होना कठिन है ।"

(सत्यार्थप्रकरण 8 में सूत्र)

मुझे इसमें सन्देह प्रतीत नहीं होता है कि हिन्दू कोड अलग अलग व्यवहारादि जन्म विषमता को दूर करने में सहायक होगा अत: यह उपयोगी है । केवल हिन्दुओं के लिए ही नहीं, सभी भारतीयों के लिए एक सर्वसामान्य व्यवहार संहिता (कोड) बनाई जाय इस मांग में मुझे कोई बुराई प्रतीत नहीं होती पर उसमें अधिक समय लगेगा । उससे पूर्व हिंदुओं के संगठन को दृढ़ करने तथा सामाजिक बुराइयों को दूर करने के लिए हिन्दू कोड की भी उपयोगिता से इन्कार नहीं किया जा सकता । मौलाना नसीरुद्दीन अहमद जैसे व्यक्ति जो कट्टर मुस्लिम लीगी रहे हैं और जिनकी मनोवृत्ति मे अब विशेष परिवर्तन हो गया है, ऐसा मानने का हमें कोई प्रमाण नहीं मिलता, यदि इस दृष्टि से भी हिन्दू कोड का विरोध कर रहे हैं तो कोई आश्चर्य की बात न होगी अन्यथा उनका इससे कोई सम्बन्ध तो नहीं जिससे सात-सात घण्टे भाषण की उन्हें आवश्यकता प्रतीत हो ।

यह कहना कि वर्तमान संविधान सभा के सदस्यों को ऐसे बिल को बनने व स्वीकृत करने का अधिकार नहीं हमें युक्तिसंगत प्रतीत होती । यदि सभा विधान बनाने जैसे महत्त्वपूर्ण कार्य को करने का अधिकार रखती है तो उसे हिन्दू कोड बिल जैसे उपयोगी बिल को बनाने व उसे पास करने के अधिकार से कैसे वंचित किया जा सकता है विशेषत: जब कि संविधान सभा एक सर्वाधिकार सम्पन्न स्वतन्त्र संस्था मानी जा चुकी है । हां, इतनी बात अवश्य न्यायसंगत और युक्तियुक्त है कि हिन्दू कोड बिल जैसे बिल पर सम्मति देने का अधिकार केवल हिन्दू सदस्यों को ही हो अन्यों को नही क्योंकी अहिंदुओं का इससे कोई सम्बन्ध नहीं । जैसा कि मैने एस लेखमाला में शास्त्रीय और व्यावहारिक दृष्टि से प्रस्तुत हिन्दू कोड बिल की भिन्न-भिन्न मुख्य धाराओं पर प्रकाश डालते हुए बताया है एक विवाह, अन्तर्जातीय विवाह समर्थन, स्त्रियों की दशा को उन्नत इत्यादि विषयक इसके प्राधान प्रशंसनीय है । विवाह की आयु, पुत्रियों के दायभाग में अधिकार तथा अन्य विषयों में संशोधनों की आवश्यकता है । वर-वधू के लिए न्यूनतम आयु 24 वर्ष और 16

होनी सर्वथा उचित है 22 और 15 तुरन्त कर ही देनी चाहिए यदि तत्काल 24 और 16 नियत करने में कोई विशेष कठिनाई हो । अति विशेष अवस्थाओं में सम्बन्ध-विच्छेद की अनुमति देना आवश्यक हो तो उसकी शर्तों को और अधिक कठोर बनाया जाए तथा 8, 10 वर्ष की ऐसी अवधि निश्चित की जाए जिसके भीतर नपुंसकता, पागलपन तथा कुष्ठ (कोढ़) इत्यादि के कारण भी सम्बन्ध विच्छेद की अनुमति न दी जाए । विषम विवाहों को दूर करने के लिए भी नियम बनाने आवश्यक हैं । गोद लेने के लिए पुरुष की आयु 25 वर्ष और स्त्री की आयु 21 वर्ष की अवश्य होनी चाहिये । पुत्रियों को दायभाग में वसीयतहीन मृत पिता की सम्पत्ति में पुत्रों के बराबर नहीं किन्तु चौथाई भाग मिलना चाहिये । हां पति की सम्पत्ति और माता के स्त्रीधन में से स्त्रियों को विशेष अधिकार मिलना चाहिए । पुत्रियों को पैतृक अचल सम्पत्ति के उपभोग का अधिकार होना चाहिए, भाई के अतिरिक्त अन्यों को बेचने तथा किराये पर देने का नहीं, इत्यादि संशोधन के लिए प्रयत्न करते हुए यदि हिन्दू कोड बिल का समान्यरुपेण समर्थन किया जाए तो यह समाज और देशहित की दृष्टि से मेरे विचार में सर्वथा उचित ही होगा । हिन्दू समाज की वर्तमान अवस्था शोचनीय है, उसका उद्धार अनेक आवश्यक सुधारों के बिना जिनमें जातिभेद को दूर करने का प्रमुख स्थान है संभव प्रतीत नहीं होता । आशा है विचारशील महानुभाव निष्पक्ष होकर इन विषयों पर गम्भीरता से विचार करेंगे ।

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